In the Supreme Court

OF THE

United States

OCTOBER TERM, 1940

No. 341

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COUNTY OF FRESNO and WALTER S. HENDERSON, JR., Assessor of the County of Fresno, State of California,
Petitioners,

vs.

COMMODITY CREDIT CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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No.

COUNTY OF FRESNO and WALTER S. HENDERSON, JR., Assessor of the County of Fresno, State of California,

Petitioners,

vs.

COMMODITY CREDIT CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioners, County of Fresno and Walter S. Henderson, Jr., Assessor of the County of Fresno, State

of California, respectfully pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Ninth Circuit to review the decree of that Court entered on June 12, 1940 (R. 51, ... Fed. (2d).....), affirming the order and judgment of the District Court of the United States for the Southern District of California, Northern Division (R. 22-25, ...Fed. Supp....., March 4, 1939), holding that personal property taxes levied, by the County of Fresno, State of California, on certain cotton situate in that county were improperly levied because the respondent herein had acquired a pledgee's lien thereon.

QUESTIONS PRESENTED.

I. Whether the respondent, Commodity Credit Corporation, was constitutionally created, ever since has been and is now functioning under any constitutional authority;

II. Whether Personal Property that has been pledged to the Commodity Credit Corporation "belongs to" said Corporation;

III. Whether a county of the State of California may legally levy a tax upon personal property located within its boundaries at twelve o'clock M. on the first Monday in March although that property has been pledged to the Commodity Credit Corporation (a) after and (b) prior to said day;

IV. Whether personal property that has been pledged to the Commodity Credit Corporation "belongs to" the United States;

V. Whether a county of the State of California may legally collect a tax levied upon personal property by a "tax sale" without selling the property subject to the pledge lien acquired by the respondent.

STATUTES INVOLVED.

Rather than quote all the state and federal constitutional and statutory provisions that are applicable to the instant matter we have attached the same to the brief in support of this petition as Exhibit A. (Appendix p. 1.)

However, in order that the Court may have a rather complete picture of the taxing processes of the counties throughout the State of California, we present herein a brief summary of the pertinent constitutional and statutory provisions of the State of California. (The Constitutional and Political Code Sections referred to are quoted in the Appendix.)

While the State of California has the right to levy ad valorem taxes on property situated within its territorial jurisdiction, nevertheless, the State is not at the present time exercising that right and the expenses of operating the state government are generally supplied by indirect excise taxes. The taxa-

tion of property, according to its value, is left to the counties, cities, etc.

All personal property save such as may belong to the United States (and other exemptions not material herein), must be assessed to and in the name of the person who owns or who has possession thereof. (See Section 1 of Article XIII of the Constitution, Sections 3628 and 3636, Pol. Code.) In order to determine whether any particular piece of personal property is subject to assessment during any particular year it is necessary to determine its status as of the first Monday in March immediately preceding the fiscal year for which the assessment is levied. (See Section 8 of Article XIII and Section 3628, supra, and *Dodge v. Nevada National Bank,* 109 Fed. Rep. 726, 731, 732, and *East Bay Municipal District v. Garrison,* 191 Cal. 680, 690, 218 Pac. 43.)

The assessment is made between the first Monday in March and the first Monday in July in any particular year. (See Section 3628, Political Code.) This assessment is levied upon the full assessable value of the property in question. (Section 3627, Political Code.) In order to facilitate the assessment of property the owners thereof or the person in possession is required to file with the assessor a statement of all the property owned by him or in his possession. (Section 3629, Political Code.) The assessor is required to enter his assessment upon "an assessment roll" showing the personal property owned or in possession separately from the real property. (Section 3650, Political Code.)

If, in the assessor's discretion or opinion the person assessed does not have sufficient real property to secure the payment of the personal property tax levied the assessor is authorized to proceed to collect the same. (Section 3820, Political Code.)

The county is given its choice of several remedies to effect this collection. It may, on the one hand, bring a personal action against the person assessed, pursuant to the provisions of the statutes of 1903, page 130, or it may, on the other hand, have the assessor proceed to seize or distrain and sell the property pursuant to the provisions of Section 3821, Political Code.

Section 3821 authorizes the assessor to seize *any* personal property owned by the person against whom the assessment is levied.

The taxes levied against personal property are a lien on any real property owned by the person against whom the personal property taxes were levied. (See Section 3717, Political Code.)

Section 3716 of the Political Code does, in our estimation, provide for a priority for real and *personal property taxes levied* by county officials. (Appendix p. 5.)

STATEMENT OF THE CASE.

This case involves an appeal in the Circuit Court of Appeals of the United States for the Ninth Circuit by the petitioners who are the County of Fresno, a political subdivision of the State of California, and

Walter S. Henderson, Jr., the assessor of the County of Fresno, from a judgment of the District Court of the United States for the Southern District of California, Northern Division.

On October 25, 1938, the respondent, Commodity Credit Corporation, filed its amended bill of complaint, for a declaratory judgment, in said District Court. (R. pp. 4-19.)

The complaint asked the District Court to adjudge and declare that (1) the Commodity Credit Corporation was an instrumentality of the United States engaged in governmental functions, and (2) that it acquired, by the negotiation to it of warehouse receipts, rights, liens, and interests in and to the cotton in question herein, and (3) that such rights, etc. are immune from taxation by a political subdivision of the State of California, and (4) that any seizure or sale of the cotton herein, in the event of the nonpayment of such taxes, is illegal and void unless made expressly subject to the Commodity Credit Corporation's rights, interests, and liens in such cotton. (R. pp. 16-19.)

The petitioners herein moved to dismiss the bill of complaint. (R. p. 21.) The District Court denied that motion (R. p. 22) and entered its judgment for the declaratory relief prayed for in said complaint. (R. pp. 23-25.)

(It is to be noted that the District Court did not, in its opinion (R. p. 22) discuss (1) the constitutionality of the Commodity Credit Corporation or (2) the relative priority of the tax claim and the

Corporation's claim as pledgee, i. e., it merely held that any interest acquired by the Corporation by virtue of its pledge was immune from state taxation although some of the cotton in question had been pledged to the Corporation *after* the first Monday in March, 1938.)

The material facts, as alleged in the bill of complaint (R. pp. 4-19) and admitted by the motion to dismiss (R. p. 21), are as follows:

The Commodity Credit Corporation (hereinafter referred to as the Corporation) was organized under the laws of the State of Delaware and its entire capital stock is owned by the United States. (R. pp. 4-5.) (A copy of its articles of incorporation is attached to the brief in support of this petition as Exhibit B, Appendix p. 15.)

In the course of the Corporation's operations it advanced large sums of money to the producers of cotton deposited in a warehouse in the County of Fresno, State of California (hereinafter called the County). *The amount of money advanced was equal to or in excess of the value of the cotton.* The advances on such cotton were secured by the cotton and negotiable warehouse receipts which have been delivered to and are held by the Corporation. Under loan agreements (a copy of a typical agreement is attached to the supporting brief herein as Exhibit C, Appendix p. 25), pursuant to which the money was advanced, the cotton is pledged to the Corporation as security for the repayment of the advances and certain incidental costs. The Corporation has the right to pos-

session of the cotton, by virtue of the negotiation to it of the warehouse receipts, and in case the producers do not repay the advances, it has the right to sell the same but *does not have the right to hold the producers personally liable for any deficiencies resulting from those sales.* (R. p. 12.)

The Corporation made the loans and the cotton was pledged to it, as security, (1) *prior to twelve o'clock meridian, March 7, 1938,* (2) *on said date* and (3) *after* that date. (R. pp. 12-14.)

The cotton has continuously since March 7, 1938, remained on deposit in the warehouse and the Corporation has continued to hold and now holds warehouse receipts therefor.

From time to time, between March 7, 1938, and June 21, 1938, the assessor of the County levied assessments upon all the cotton deposited in warehouses in that County, including all of the cotton covered by warehouse receipts held by the Corporation. (Those warehouse receipts having been acquired both before and after the assessments.) The cotton *was assessed to unknown owners,* at the full assessable value and, in the case of the cotton covered by warehouse receipts held by the Corporation without any deductions or allowances whatsoever being made by reason of the Corporation's rights or liens claimed to have been acquired by virtue of the pledge. (R. p. 14.)

On June 21, 1938, the assessor of the County seized and gave notice that he, on that day, seized possession of 20,990 bales of cotton (the assessment amounted to $419,800 and a tax of $17,505.66 was levied thereon),

in the warehouse and that he would sell the same or so much thereof as might be necessary to satisfy the taxes levied against the 20,990 bales of cotton on June 29, 1938. The 20,990 bales so assessed and seized and noticed for sale included cotton that had been pledged to the Corporation. (R. p. 15.)

The Corporation commenced this action for declaratory relief for the purpose heretofore mentioned. (R. pp. 18-19.)

On May 4, 1939, the petitioners filed their notice of appeal from the judgment of the District Court (R. pp. 25-26) and on June 19, 1939, they filed their statement of points to be relied upon on appeal and designation of the record to be printed. (R. pp. 32-36.)

Thereafter, and on June 13, 1940, the Circuit Court of Appeals rendered its opinion affirming the judgment of the District Court. (R. p. 43.)

(It is to be noted that although (1) the specification of errors (R. pp. 32-33), (2) the County's opening and closing briefs and (3) the Corporation's reply brief did not mention or discuss the relative priority (Section 3716, Political Code) of the tax claim and the Corporation's alleged pledge lien, the opinion of the Circuit Court dealt solely with this question. (*This* priority issue was raised by the Court during the oral argument and supplemental briefs were filed thereon.))

The Circuit Court did not *expressly* decide (1) the right of the County to levy a tax under these circumstances and (2) the constitutional issue as to the

validity of the creation and continued existence of the Commodity Credit Corporation.

This petition was filed for the purpose of having this Honorable Court review the decree of the Circuit Court of Appeals.

SPECIFICATIONS OF ERROR.

I. The Circuit Court of Appeals erred in not holding that the Commodity Credit Corporation was unlawfully created and was, at all times pertinent herein, operating without constitutional authority;

II. The Circuit Court of Appeals erred in not holding that a corporation created and operating without constitutional authority could not be the holder of a lien interest in the cotton in question;

III. The Circuit Court of Appeals erred in holding that there was in existence a lien on the cotton in question herein;

IV. The Circuit Court of Appeals erred in not *specifically* holding (although it did so by implication or did so arguendo) that the County of Fresno could legally levy a tax on cotton situated in that County on the first Monday in March, 1938, and owned, at that time, by a taxable individual;

V. The Circuit Court of Appeals erred in not *specifically* holding (although it did so by im-

plication or did so arguendo) that the County of Fresno could legally levy a tax on cotton situated in that County on the first Monday in March, 1938, and owned, at that time, by a taxable individual even though it was, at that time, pledged to the Commodity Credit Corporation as security for loans made to the producer/owner of that cotton;

VI. The Circuit Court of Appeals erred in holding that the alleged lien of the Corporation was entitled to priority over the tax claim of the County of Fresno;

VII. The Circuit Court of Appeals erred in not holding that the County of Fresno could sell, at a tax sale, as provided by Statutes of the the State of California, that cotton free and clear of any alleged rights, interests, and liens of the Commodity Credit Corporation in that cotton;

VIII. The Circuit Court of Appeals erred in not discussing or deciding fundamental and pertinent constitutional issues that were raised and presented and the answers to which were essential and necessary for a proper disposition of the present cause.

REASONS FOR GRANTING THE WRIT.

(1) The Circuit Court of Appeals has decided an important question of local law in a way in conflict

(1) with applicable decisions of the Courts of last resort in California, and (2) pertinent California Statutes:

Calif. Loan and Trust Co. v. Weis, 118 Cal. 489, 50 Pac. 697;

O'Dea v. Mitchell, 144 Cal. 374, 381, 77 Pac. 1020, 1022;

Woodil & Hulse Elec. Co. v. Young, 180 Cal. 667, 669, 670, 182 Pac. 422, 424;

San Mateo County Bank v. Dupret, 124 Cal. App. 395, 396, 12 Pac. (2d) 669, 670;

Sec. 3716, *Political Code, California.*

We believe that these cases definitely establish the principle that in the State of California a tax levied on *real or personal property* is entitled to priority over a privately held lien on such property irrespective of the time that lien was acquired (we are assuming, arguendo, that there was an outstanding lien in the present cause).

The Circuit Court of Appeals relied on *Guinn v. McReynolds,* 177 Cal. 230, 232, 170 Pac. 421, which is in conflict with the decisions of the Courts of the State of California, which we have heretofore cited.

We believe that Section 3716 establishes a statutory priority for *all local* ad valorem taxes in the State of California.

Further we believe that by seizure of the cotton by the assessor pursuant to Section 3821 of the Political Code, petitioners acquired a lien thereon

which is granted priority over private liens by the provisions of Section 3716 of the Political Code.

R.C.A. Photophone Inc. v. Huffman, 5 Cal. App. (2d) 401, 42 Pac. (2d) 1059.

(2) The decision of the Circuit Court of Appeals has, by implication, decided important questions of federal law which have not been, but should be settled by the Supreme Court of the United States.

While the Circuit Court of Appeals did not definitely decide that (1) the Commodity Credit Corporation was lawfully created and was now operating under constitutional authority or (2) that the County of Fresno had constitutional authority to levy a tax on cotton, situated therein, but pledged to the Corporation to secure a loan in excess of the value of the cotton, nevertheless, the Circuit Court of Appeals has, by implication, decided these federal questions. This is so because (1) the County of Fresno contended, *inter alia,* in the Circuit Court, that there was no outstanding pledgee's lien against or on the cotton in question and therefore the judgment of the District Court should be reversed. The basis of such contention was that the Corporation (allegedly having a lien) did not have any legal existence.

This is so because (2) the Corporation contended, *inter alia,* in the Circuit Court, that the question of the relative priority of the tax claim and its pledgee's lien was immaterial because the County's taxes were illegally levied on cotton "belonging to" the United States or the Commodity Credit Corporation.

Considering these two contentions, *which were the sole issues briefed prior to the oral argument before the Circuit Court,* it necessarily follows from a reading of the Circuit Court's opinion (R. pp. 43-50) that the Circuit Court decided, by implication, that (1) the Commodity Credit Corporation was lawfully created and is now operating and functioning pursuant to constitutional authority, and (2) that the County of Fresno could constitutionally tax cotton, situated in that County on the first Monday of March, 1938, although that property was pledged to the Commodity Credit Corporation, and (3) that the only issue before the Circuit Court was the question of the relative priority, *under state law,* of the Corporation's lien and a valid tax claim.

These constitutional issues present great and important questions of federal law which have not been, but should be settled by the Supreme Court of the United States.

Applicable decisions of this Court and of other Courts will be cited and discussed in our brief in support of this petition.

(3) The Circuit Court of Appeals has, by implication, decided a federal question in conflict with decisions of this Court.

In (2) supra, we believe that we have established that the Circuit Court of Appeals decided, by implication or arguendo, that the Corporation was validly created and is now operating pursuant to constitutional authority.

Inasmuch as it is our position that (1) the act purporting to authorize the creation of the Corporation unlawfully delegated legislative power to the President of the United States and (2) that the sole purpose for which the Corporation was created and is now operating is to control the *local production* of agricultural commodities, we submit that the decision of the Circuit Court is in conflict with the following decisions of this Court:

Mulford v. Smith, 307 U. S. 38;
Schechter Corp. v. U. S., 295 U. S. 495;
U. S. v. Butler, 297 U. S. 1;
Ashwander v. T.V.A., 297 U. S. 288;
Carter v. Coal Co., 298 U. S. 238;
Panama Refining Co. v. Ryan, 293 U. S. 388;
Hammer v. Dagenhart, 247 U. S. 251;
Currin v. Wallace, 306 U. S. 1;
Labor Board v. Jones & Laughlin, 301 U. S. 1, 30, 40, 45.

We shall present in our supporting brief our argument in support of our contentions that (1) the act purporting to create the Commodity Credit Corporation unlawfully delegated congressional power to the President of the United States and (2) that the Corporation was created for the sole purpose of controlling *local production* of agricultural commodities.

(4) The Court should grant this petition in order that this Court may have the opportunity to pass upon constitutional issues of great public importance.

It is in the public interest that the issue in regard to the constitutionality of the Commodity Credit Cor-

poration and in regard to the right of a political subdivision of a state to *levy and collect* a *non-discriminatory* property tax on commodities pledged to an instrumentality of the federal government should be decided by the Supreme Court of the United States.

The federal government has, since 1933, created many corporations under circumstances similar to those found herein and will, under present trends, create more of such corporations in the future or the functions of the existing corporations will be enlarged and expanded.

These corporations have had and will have millions of dollars placed at their disposal and consequently in distributing this money in commercial channels throughout the United States they have affected and will affect the commercial and industrial lives of the citizens of this country.

In the meantime the various states of these United States have found that their taxing power was in danger of being curtailed by this ever-increasing expansion of activities by the federal government.

The present cause affords, we believe, an opportunity to this Court to consider, for the first time, the validity of one of the instrumentalities used by the Federal government so to expand its activities and at the same time to consider the effect such expansion must necessarily have on the taxing powers of the various states.

The answers to these questions are, at the present time, of fundamental importance to the federal government and the respective states within that government. They should be advised, by this Court, as to the proper scope of their respective powers.

The Court has, in recent terms, we respectfully submit, made fundamental shifts in two constitutional doctrines, i.e., power of Congress under the commerce clause and in the interpretation of the "implied immunity doctrine". The present cause requires an application of those doctrines, as recently construed, in a case where the real parties in interest are the federal government and one of the states of the United States.

In view of these facts, we believe that it is in the public interest that this Court pass upon the fundamental constitutional issues presented by the instant matter in order that the respective governments involved herein may adjust their future actions accordingly.

No one can definitely say, under the opinions rendered herein, whether (1) the Corporation was lawfully created, or (2) a State or its political subdivisions can levy a tax on property pledged to the Corporation or any other federal corporation.

Wherefore, it is respectfully submitted that this petition for certiorari to review the judgment and decree of the United States Circuit Court of Ap-

peals for the Ninth Circuit in the above mentioned cause should be granted.

Dated, Fresno, California,
August 7, 1940.

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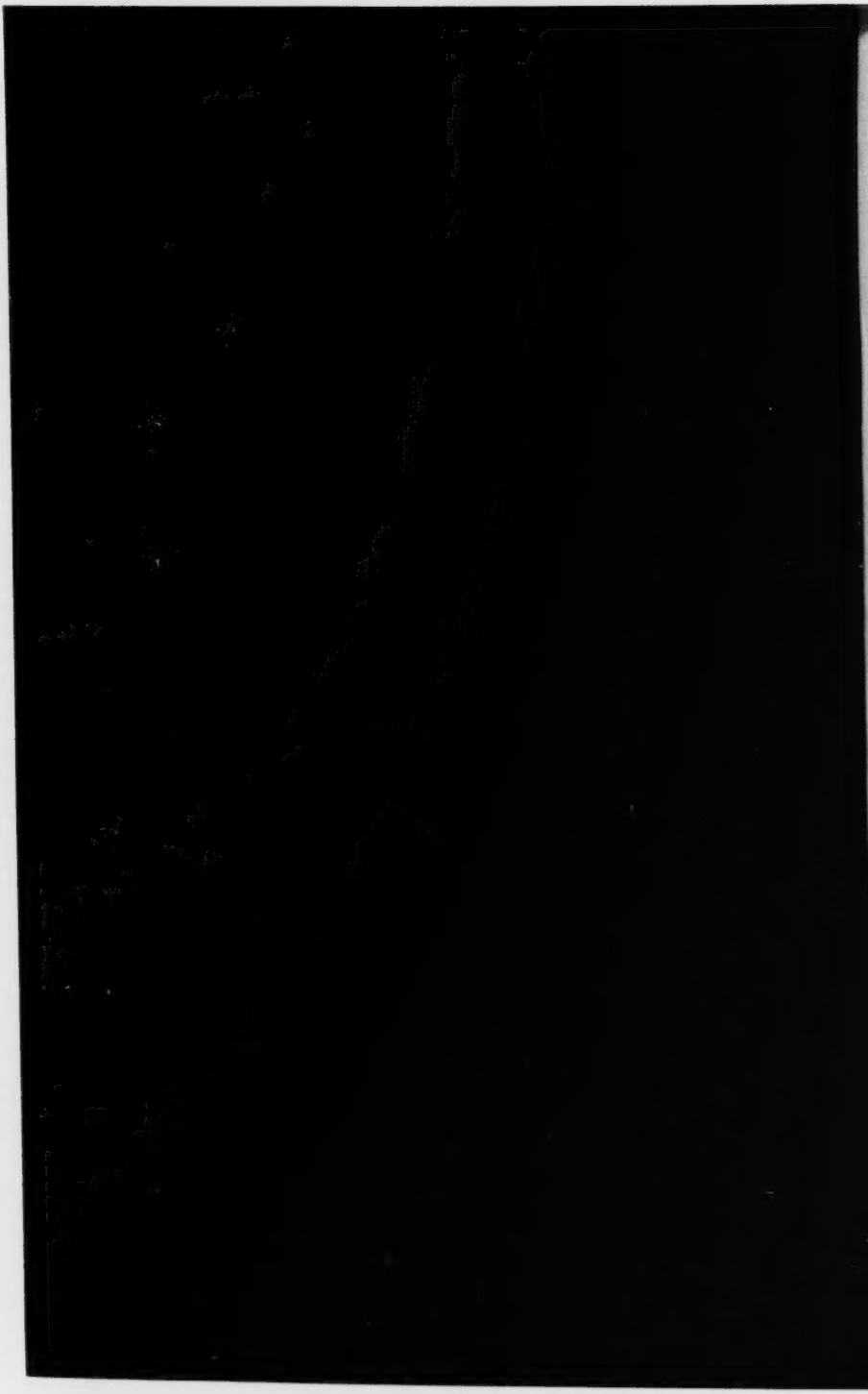

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

No.

COUNTY OF FRESNO and WALTER S. HENDERSON, JR., Assessor of the County of Fresno, State of California,
Petitioners,

vs.

COMMODITY CREDIT CORPORATION,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

(A) RULINGS OF THE COURTS BELOW.

The Circuit Court of Appeals for the Ninth Circuit ruled in favor of the respondent and affirmed the judgment and order of the District Court of the United States for the Southern District of California, Northern Division. The opinion of the Circuit Court, although appearing in the record (R. 43-50) has not, as yet, been reported.

The District Court ruled in favor of the respondent and its opinion, in the form of a memorandum of order, appears in the record (R. 22) but has not been reported.

(B) JURISDICTION.

The jurisdiction of the Court is invoked under Section 240, Judicial Code, as amended by the Act of February 13, 1925. (43 Stats. 938, 28 U.S.C.A. Vol. 4, p. 359, Section 347.)

The District Court rendered its opinion on January 12, 1939, holding that petitioners could not tax the cotton in question. (R. 22.)

The District Court made and entered its judgment to that effect on March 4, 1939. (R. 23-25.)

Petitioners filed their notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit on May 4, 1939, from the judgment and order of the District Court. (R. 25-26.)

The judgment and decree of the Circuit Court of Appeals affirming the judgment and order of the District Court was made, filed and entered on June 12, 1940 (R. 51), and the opinion of the Court in connection with the said judgment and decree was filed on June 12, 1940, and appears in the record (R. 43-50) but has not, as yet, been reported.

(C) THE FACTS AND SPECIFICATIONS OF ERROR.

The facts and specifications of error are set forth in the accompanying petition for writ of certiorari and, in the interest of brevity, will not be repeated here.

However, we believe that it is proper that we point out herein that the present cause has been selected by the petitioners and respondent *as a test case* to determine whether a state or its political subdivisions may *levy and collect* a non-discriminatory *property* tax upon various commodities (cotton, prunes, raisins, etc.) situated within the jurisdictional boundaries of a state or its political subdivisions even though such commodities were, *prior to or after such levy,* pledged to the respondent as security for a loan made to the producers-owners of those commodities.

At the time the present cause was commenced various counties throughout the State of California had taxed to the producer-owner, cotton, prunes, raisins, etc. and would have effected collection of such taxes by a tax sale had not the respondent instituted the present action. By stipulation entered into by the legal representatives of the respondent and of those counties it was agreed that the tax sales for the year 1938 and subsequent years would be postponed pending a final determination herein.

The petitioners alone now have approximately $300,000 in taxes assessed against the producers of such commodities and are awaiting the outcome of this case before proceeding to effect collection of the

same by a tax sale. There are about fourteen (14) counties, other than petitioner, in the State of California also waiting, pursuant to the stipulation referred to, the decision of this Court.

It is also our understanding that practically every State in the Union has a similar problem and is looking to the decision of this Court in the instant matter to clarify their right to tax these commodities.

We also believe that it is appropriate that we set forth herein the history of the Commodity Credit Corporation, respondent, herein, to-wit:

Section 2 of Title I of the National Industrial Recovery Act of June 16, 1933 (48 Stats. 195 (hereinafter referred to as N.R.A.)) provided, in part, as follows:

> "(a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies * * * as he may find * * * necessary * * *.
>
> (b) The President may delegate any of his functions and powers under this title to such officers, agents and employees as he may designate or appoint, * * *.
>
> (c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section I has ended." (Appendix p. 9.)

The policy referred to by Section 2 of the Act, supra, is set forth by Section 1 of Title I of the Act as follows:

> "A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trades groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industry, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry, and to conserve natural resources."

Pursuant to Section 2(a) of the N.R.A. and to effectuate the policy referred to in Section 1 of that Act, the President, on October 16, 1933, issued *Executive Order No. 6340.* (Exhibit D, Appendix p. 36.) Said order purported to authorize the incor-

poration of the Commodity Credit Corporation (hereinafter referred to as the Corporation).

Attention is particularly called to the following language found in said executive order, to-wit:

> "* * * Now, therefore, under and by virtue of the authority vested in me by the National Industrial Recovery Act of June 16, 1933, it is hereby ordered that an agency, to-wit: A corporation, under the laws of Delaware, be created, said corporation to be named the Commodity Credit Corporation * * *"

On January 31, 1935, Congress purported to extend the life of the Corporation to April 1, 1937. (See Exhibit E, Appendix p. 40.)

On January 26, 1937, Congress purported to continue the existence of the Corporation until June 30, 1939. (See Exhibit F, Appendix p. 41.)

On March 13, 1939, Congress purported to extend the life of the Corporation to June 30, 1941. (See Exhibit G, Appendix p. 42.)

The Corporation has an authorized and paid in capital of $100,000,000. Under the provisions of the Act of March 8, 1938 (Public No. 442, 75th Congress, 52 Stat. 107, Appendix p. 10), the Secretary of the Treasury is required to make an appraisal of all of the assets and liabilities of the Corporation, as of March 31st of each year for the purpose of determining its net worth, and in the event such appraisal establishes a net worth of less than $100,000,000, the Secretary of the Treasury is required, on behalf of

the United States, subject to appropriation of funds therefor which is authorized by the Act, to restore the amount of such capital impairment. In the event the net worth of the Corporation, as of March 31 of any year, is in excess of $100,000,000, such excess is required to be deposited in the Treasury by the Corporation to be credited to miscellaneous receipts. (R. 5-6.)

Under the Act of March 8, 1938, supra, the Corporation is authorized with the approval of the Secretary of the Treasury, to issue and have outstanding at any one time, notes, bonds, debentures, and other similar obligations in the aggregate amount of not exceeding $900,000,000, such obligations when issued, pursuant to this Act, are fully and unconditionally guaranteed both as to principal and interest, by the United States. (R. 8.)

The Corporation is essentially a lending institution making loans to producers to finance agricultural commodities. The Corporation has made loans on cotton, corn, gum, turpentine, and gum rosin, wool and mohair, wheat, peanuts, tobacco, raisins, dates, figs, prunes, butter, hops and pecans.

The loans of the Corporation are functioned through certain designated loan agencies of the Reconstruction Finance Corporation, the managers of which act for the Corporation in approving notes secured by agricultural commodities which are submitted for direct loan from the Corporation, or which are tendered by lending agencies for purchase by the Corporation.

Loans on corn, cotton, wheat, raisins, wool and mohair are made under an arrangement whereby banks and other local lending agencies may make the loans to producers in the first instance on forms furnished by the Corporation. Such of them as meet the requirements of the Corporation are acceptable to it for purchase at par with accrued interest, if tendered on or before a fixed date. Generally, the agreement to purchase such notes is at par with accrued interest.

If local credit facilities are unavailable for any reason the Corporation makes direct loans in which case a note and loan agreement is executed by the producer with the Corporation as the payee, and mailed with the other prescribed documents for approval and acceptance to the loan agency of the Reconstruction Finance Corporation serving the district where the producer resides.

The note and loan agreement (Exhibit C) employed by the Corporation with respect to all loans which are made to individual producers provides, *inter alia,* "that the producers shall not be personally liable as long as he curtails production in accordance with the plan set forth by the Secretary of Agriculture".

Under Public Act No. 442 of the 75th Congress, approved March 8, 1938, the Secretary of Agriculture, the Governor of the Farm Credit Administration, and the Reconstruction Finance Corporation, were directed to transfer to the United States, all rights, title and interest in and to the capital stock of the Cor-

poration which each of them held at that time. (R. 9-10.)

Section 302 of the Agricultural Adjustment Act of 1938 (52 Stats. 31, 43, Exhibit A, Appendix p. 9) authorizes the Commodity Credit Corporation to make loans on agricultural commodities. We particularly call the Court's attention to subsections C and F of said Section 302, for the purpose of establishing that Congress primarily was attempting to control local production of cotton.

Under Section 401(a) (Public Resolution No. 20, 76th Congress, June 7, 1939), all of the activities of the Corporation were transferred to the Department of Agriculture.

We thus see that the Corporation created in 1933 pursuant to an executive order of the President of the United States (as purported to be authorized by Section 2 of the N.R.A.) with an initial capital of $3,000,000 has functioned and grown during the six years following to a large lending institution having a prescribed capital of $100,000,000 and having outstanding notes, bonds, debentures, etc., in the amount of $900,000,000. It has made loans to producers on virtually all types of agricultural commodities. It is apparent that the sole purpose of these loans was to control the local production of agricultural commodities grown within the states of the United States in an attempt to raise prices of agricultural commodities and thereby to increase the purchasing power of farmers throughout the United States.

(D) FOREWORD.

Prior to presenting our argument herein we deem it advisable to present a review of the creation and function of corporations which have been federally owned or chartered, to-wit:

Until 1932 the United States had little experience with government-chartered corporations and less with corporations owned or controlled by the Federal Government. Prior to the World War, the Panama (32 Stats. 481) and Alaska (38 Stats. 305) railroads represented the only federal excursions into the field of government-owned corporations. Greater experience has been had with corporations federally chartered—but not exclusively owned or controlled by the Federal Government; even here, however, that experience has been limited to the creation of banking and credit corporations designed for either general financial uses or for the supplying of more specialized financial facilities for agriculture. (First U. S. Bank, 1 Stats. 191, Second U. S. Bank, 3 Stats. 266, National Bank, 13 Stats. 99, Federal Reserve Bank, 38 Stats. 251, Federal Land Bank, 39 Stats. 362, 363, National Farm Loan Assoc., 39 Stats. 365, Joint Stock Land Bank, 39 Stats. 374.) In 1923 the Federal Farm Loan Act was amended to authorize the Federal Intermediate Credit Bank (42 Stats. 1454) and the National Agricultural Credit Associations. (42 Stats. 1461.)

The war brought a change in the character of governmental corporations, and the Federal Government now became not only the incorporator but also the

exclusive owner of a number of agencies which wartime development made necessary; the first of these was the Emergency Fleet Corporation, formed by the United States Shipping Board in pursuance of the authority granted to it in the original Shipping Act. (39 Stats. 729.) All of its stock was subscribed and paid for by the United States Shipping Board. Five additional wartime corporations were formed which have now gone out of existence, to-wit: the United States Grain Corporation (40 Stats. 276), War Finance Corporation (40 Stats. 506), the United States Housing Corporation (40 Stats. 594), U. S. Sugar Equalization Board (40 Stats. 276), and the United States Spruce Corporation. (40 Stats. 888.) (For a good review of these wartime corporations see *Skinner & Eddy Corporation v. McCarl,* 275 U. S. 1.) All of these instrumentalities were corporations entirely owned by the Federal Government.

After the war, only four government corporations were created until the year 1933. These were the Federal Intermediate Credit Bank (42 Stats. 145), Inland Waterways Corporation (43 Stats. 360), Reconstruction Finance Corporation (47 Stats. 5), The Federal Home Loan Bank (47 Stats. 725). Since March, 1933, some twenty government-owned or government-chartered corporations have been created. (See 48 Harvard Law Review 775; 14 North Carolina Law Review 234, 337; 21 Va. Law Review 465, 501; 4 Geo. Washington Law Review 161; 44 Yale Law Journal 326; 49 Harvard Law Review 1323.)

An entire group of corporations has sprung from the present agricultural program. The Farm Credit Act of 1933 authorized the organization of a Central Bank for Co-Operatives (48 Stats. 261), 12 Banks for Co-Operatives (48 Stats. 257), 12 Production Credit Corporations (48 Stats. 257), and any necessary number of Production Credit Associations. (48 Stats. 259.) These corporations are designed for the purpose of credit facilities for the production of harvesting of crops, feeding of livestock, etc. The Federal Farm Mortgage Corporation (40 Stats. 347) was formed to aid the Federal Land Banks in their farm debt refinancing program. We have already referred to the creation of the Commodity Credit Corporation, involved herein, which was created in 1933 pursuant to Executive Order 6340 (which order was purported to be authorized by Section 2 of the N.R.A.). The Federal Surplus Relief Corporation (Public Law No. 93, 73d Congress, Second Session, February 15, 1934, Executive Order No. 7150, August 19, 1935) was formed to bridge the gap between the destitute unemployed and surpluses of farm commodities. Its function is to purchase surplus food supplies and to distribute them to those on relief.

A second group of government corporations centers around the housebuilding and financing program. The most important of these is the Home Owners Loan Corporation authorized under the Home Owners Loan Act of 1933. (12 U. S. Code Ann. Section 1463.) This corporation was formed for long term loans at low in-

terest rates to those who could not otherwise retain their homes through meeting regular payments or by refinancing. The corporation is authorized to issue $200,000,000 in capital stock to the Treasury, and to issue bonds, the interest on which is guaranteed by the government, to enable it to make some $4,500,000,000 in loans. The Home Owners Loan Act also provides for the creation of a Federal Savings and Loan System (48 Stats. 645) to cooperate with local citizens in setting up loan associations in communities not now adequately served. The Federal Savings and Loan Insurance Corporation (48 Stats. 1256) has also been established under the authority of the National Housing Act. Its purpose is to insure the safety of accounts of investors and depositors in thrift and home financing institutions.

We have deemed it advisable to present this review because:

(1) We desire to show that prior to 1933 such corporations were created by an Act of Congress which defined their duties and functions;

(2) We desire to show that those corporations, prior to 1933, were engaged primarily in traditionally governmental functions, while thereafter corporations were created and have been engaged in functions that have hitherto been unknown to the Federal Government.

(3) We desire to show the Court the attendant consequences, if respondent's contentions are sustained, upon the taxing power reserved to

the respective states by the Federal Constitution when it is considered that more and more of these corporations are being created to carry on functions that were hitherto unknown to the Federal Government.

(E) SUMMARY OF ARGUMENT.

I. *The respondent was unlawfully created and is operating without constitutional authority.*

(a) The Act under which the Corporation was originally created unlawfully delegated legislative power to the President of the United States.

Section 2(a) of the National Industrial Recovery Act unlawfully delegated legislative power to the President of the United States and Section 2(b) of said Act purported to authorize the President to redelegate such power to certain agents, etc.

(b) Title I of the National Industrial Recovery Act, under which respondent was purportedly created, was invalidated.

(c) The respondent was not created to promote the fulfillment of the purpose "of Congress" in exercising a power granted to Congress by the Federal Constitution.

Since the Federal Government is one of limited powers, *Congress* has no general authority to create corporations save as means of carrying into execu-

tion some governmental power delegated to the Federal Government by the Constitution. The respondent *was created,* we submit, as one of the agencies designed by the Federal Government *to help control the local production of agricultural commodities.* This power, we believe, is not within any power delegated to the Federal Government. Therefore, respondent, not having been created as a means of effectuating a power delegated to Congress, was unlawfully created. If it is once established that the respondent does not have any lawful existence, it must necessarily follow that respondent has no lien on the cotton in question, and that petitioners may levy and collect a tax thereon.

(d) the subsequent Congressional Acts purporting to extend the existence of the respondent did not validate the creation of respondent, because:

(1) Those Acts are mere casual references and not Acts of ratification;

(2) Congress cannot ratify what it could not originally authorize;

(3) The alleged acts of ratification unlawfully delegated legislative power to administrative officers and agencies.

II. *Personal property pledged to the Commodity Credit Corporation does not "belong to" said Corporation.*

Under this point we are assuming, arguendo, that (1) respondent was lawfully created, and (2) that

petitioners cannot tax property belonging to the respondent.

No tax was assessed against respondent. The taxes in question were assessed against the producers of the cotton. The respondent did not acquire, by virtue of the pledge, any "property" in the cotton, as such. In the State of California the pledgee acquires a "special property" in the article pledged which amounts merely to the right to possession of the pledged property and the right to sell the same in case the pledgor defaults.

Therefore, the cotton pledged to the respondent does not "belong to" the Corporation.

III. *The petitioners may lawfully levy a tax upon cotton pledged to the respondent.*

Under this point it is assumed, arguendo, that (1) the respondent was lawfully created and is now operating under constitutional authority, and (2) the cotton in question belongs to respondent.

(a) The petitioners have the right to tax cotton situated in the County of Fresno on the first Monday in March, 1938 (March 7, 1938), and not pledged to the respondent.

Some of the cotton in question was not pledged to respondent until *after* "tax day" (first Monday in March). In California the status of property, for purposes of local taxation is determined as of that date. As to this cotton there can be no question of the petitioners' right to tax the

same along with any other property owned by other private individuals.

(b) Assuming, arguendo, that the Corporation *owns* cotton pledged to it, the petitioners may tax cotton that was so pledged on or before "tax day" in 1938, because:

(1) Congress has not expressly exempted the same from taxation and such immunity will not be implied;

(2) A non-discriminatory property tax does not unlawfully burden the United States.

IV. Personal property pledged to the respondent does not "belong to" the United States.

This question becomes pertinent only if this Court should decide (1) that the cotton taxed herein "belongs to" a validly created corporation, and (2) that the tax imposed by petitioners does *not* violate the implied immunity doctrine.

Respondent would contend that the cotton in question "belongs to" the United States within the purview of Section 1 of Article XIII of the Constitution of the State of California which exempts from taxation, all property "belonging to the United States".

It is our position that the respondent is an entity distinct from the United States, notwithstanding the fact all of its stock is owned by the United States. If the respondent owns a property interest in the cotton, as such, it does not follow that that interest "belongs to" the United States.

This Court has decided that if Congress has created a Corporation under the laws of a State, the Corporation has an existence separate and apart from the United States and is an entity separate and distinct from the United States.

V. The petitioners may legally collect a tax levied upon personal property by a tax sale without selling the property subject to the pledge lien acquired by the respondent.

Under this point it is assumed, arguendo (as the Circuit Court of Appeals apparently did), that (1) the respondent was validly created and therefore has a lien on the cotton in question, and (2) the petitioners lawfully imposed a tax on such cotton.

The question is then presented whether the petitioners may collect that tax at a "tax sale" without making that sale subject to respondent's lien on the cotton.

(We note that this question is material as to the cotton, pledged *after* "tax day" even if the Court should hold that the petitioners cannot tax cotton pledged to respondent *on or before* "tax day".)

It is petitioners' position that the personal property taxes are entitled to priority because:

(a) In California, taxes are inherently entitled to priority over *prior in time* private liens.

(b) Section 3716, Political Code, California, establishes a *statutory* priority for *personal property taxes* over private liens.

(c) Section 3716, Political Code of California, creates a priority for the *personal property tax lien* acquired by seizure pursuant to Section 3821 of the California Political Code.

(d) The lien acquired by respondent is in no better position than that acquired by a private individual.

Erie Rd. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, established the rule that in Federal Courts, except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the State. There is no constitutional or congressional provision that respondent can rely on herein, and therefore the lien of respondent is in exactly the same position as that held by a private individual.

(F) ARGUMENT.

I. THE RESPONDENT WAS UNLAWFULLY CREATED AND IS OPERATING WITHOUT CONSTITUTIONAL AUTHORITY.

The Circuit Court of Appeals assumed that there was, in existence, a lawfully created and existing Corporation which was capable of holding and which held a pledgee's lien on the cotton taxed by petitioners herein. We shall show that the Corporation was *not* lawfully created and that it has no legal existence, and therefore that respondent has no lien on the cotton involved herein and that the petitioners may *levy and collect* a tax thereon.

(a) The Act which purported to authorize the creation of the respondent unlawfully delegated legislative power to the President of the United States.

Section 2(a) of Title I of the National Industrial Recovery Act of June 16, 1933 (48 Stats. 195, hereinafter called N.R.A.), purported to authorize the President to create such Corporations as he might deem necessary to effectuate the purpose of the Act is disclosed by Section I of Title I of the Act. (See History of Corporation, Statement of Facts, supra.)

Section 2(b) of Title I of said act purported to authorize the President to redelegate almost illimitable powers conferred upon him to these corporate agents he was authorized to create.

We note that the respondent was not created *by Congress* as were the Corporations created prior to 1933 and referred to in the foreword herein, supra. On the other hand, Section 2(a) *purported to allow the President to create such agencies as he might find necessary to effectuate the policy of the N.R.A.*

Having this in mind, we ask the Court to note the following language:

> "It will be observed that the secretary is not required, but is permitted, if, in his uncontrolled judgment, the policy of the Act will so be promoted, to make agreements with individual farmers * * * upon such terms as he may think fair and reasonable." (*U. S. v. Butler,* 297 U. S. 1, 55.)

We submit that this amounted to an unconstitutional delegation of legislative power contrary to Sections

1 and 8 of Article I of the Federal Constitution.

See:

Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter v. U. S., 295 U. S. 495;
Field v. Clark, 143 U. S. 649;
U. S. v. Grimaud, 220 U. S. 506;
Hampton & Co. v. U. S., 276 U. S. 394;
Williamsport Wire Rope Co. v. U. S., 277 U. S. 551;
Blair v. Oesterlein Machine Co., 275 U. S. 220;
Heiner v. Diamond Alkali Co., 288 U. S. 502;
Mulford v. Smith, 307 U. S. 38;
Currin v. Wallace, 306 U. S. 1.

(b) Section 2 of Title I of N.R.A., which purported to authorize the creation of the respondent, fell with Title I of said Act.

The Executive Order No. 6340 (Exhibit D, Appendix p. 36), establishing respondent, expressly referred to Section 2 of Title I of N.R.A. as the authority creating the Corporation.

Title I of N.R.A. was invalidated by the following decisions:

Schechter v. U. S., supra;
Panama Refining Co. v. Ryan, supra.

See:

Alabama Power Co. v. Ickes, 302 U. S. 464, 473.

It follows that, inasmuch as Title I of the Act, which purported to authorize the creation of respondent, was declared unconstitutional, the Corporation was unconstitutionally created.

(c) The respondent was not created to promote the fulfillment of the purpose of Congress in exercising a power granted to Congress by the Federal Constitution.

The Tenth Amendment to the United States Constitution provides as follows:

> "Powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Waiving for the moment the question of unlawful delegation, it is our contention herein that Congress sought to delegate to the Commodity Credit Corporation the right to regulate, for the federal government, the local production of agricultural commodities.

The creation of the Corporation was part of a general scheme to achieve federal regulation of local agricultural production.

In *United States v. Butler,* 297 U. S. 1, the Court held that that scheme was an invasion of a power reserved by the Tenth Amendment of the Constitution to the States and to the people.

The Court clearly held that the control of local production of agricultural products was the objective of the Agricultural Adjustment Act of 1933. We submit that the Commodity Credit Corporation is and was merely one of the cogs in the machine which Congress purported to establish.

The Corporation does not merely offer advice, instructions, or financial aid, but, in extending the finan-

cial aid it is attempting to control local agricultural production and to fix local farm prices.

The National Industrial Recovery Act of 1933 and the Agricultural Adjustment Act of 1933 were part of a vision to achieve nation-wide economic recovery—the first by the control of industry and the latter by the control of agriculture; the ends to be accomplished through regulation by a central authority, in one case, the President of the United States, and the other, the Secretary of Agriculture.

The declared policy of Congress in the National Recovery Act and the Agricultural Adjustment Act of 1933 clearly discloses, as found by this Court, that its purpose was to control the local production of agricultural products. We submit that paragraphs 5 and 8 of the note and loan agreement (Exhibit C, Appendix p. 25) used by the Commodity Credit Corporation unquestionably show that was the unlawful purpose for which the Corporation was created. We also call attention to the provisions in Section 302 (C. & F.) of the A.A.A. of 1938, the purposes and policies of the N.R.A. and the A.A.A. of 1933, paragraph 3 of respondent's articles of incorporation, and Executive Order No. 6340. (See History of Corporation, pp. 22-27, supra, brief.)

This Court has held, many times, that local activities, such as the production of commodities by farmers, are not subject to Congressional control.

See

Chassaniol v. Greenwood, 291 U. S. 584;
U. S. v. Butler, 297 U. S. 1;

Utah Power & Light Co. v. Pfost, 286 U. S. 165;
Heisler v. Thomas Colliery Co., 260 U. S. 245;
Oliver Iron Mining Co. v. Lord, 262 U. S. 172;
Crescent Cotton Oil Co. v. Miss., 257 U. S. 129;
Kidd v. Pearson, 128 U. S. 1.

The *Schechter* and *Butler* cases, supra, clearly establish that Congress was not acting pursuant to its power to regulate commerce when it enacted the N.R.A. and the A.A.A. of 1933. Further, the *Butler* case clearly establishes that even if it purported to act under its power to regulate commerce Congress could not accomplish a purpose which would invade a right reserved to the various states.

We submit that the Corporation, not having been created as a means to effectuate or to carry out a power delegated to Congress, was created without lawful authority; that, therefore, it has no legal existence and accordingly any tax imposed upon a producer of cotton which has been pledged to the Corporation would not violate the implied constitutional immunity doctrine which grants exemption to certain types of federal instrumentalities from state taxation. Further, it cannot be said that there is any lien in existence which is entitled to priority over petitioners' tax claims.

See:
Helvering v. Gerhardt, 304 U. S. 405, 411 N.

It is our understanding that the only limitation upon the power of *Congress* to create instrumentali-

ties is that they promote in some degree the fulfillment of the purpose "of Congress" in exercising its powers.

See:

McCulloch v. Md., 17 U. S. 316, 409, 410;
Osborn v. Bank of the United States, 22 U. S. 738;
First Nat. Bank v. Fellows, 244 U. S. 416;
Smith v. Kansas City Title & Trust Co., 255 U. S. 180;
Graves v. O'Keefe, 306 U. S. 466;
Fed. Land Bank v. Crosland, 261 U. S. 374;
Rogers v. Graves, 299 U. S. 401;
Ashwander v. T. V. A., 297 U. S. 288, 8 Fed. Supp. 893, 895.

If, as in the case of respondent herein, a corporation was not created as a means of carrying into execution some governmental power delegated to the Federal Government by the Constitution, its creation and existence cannot be constitutionally justified.

Respondent, in the Circuit Court, asserted that its existence and operations could be justified as an exercise of the "fiscal powers". The respondent relies upon the various clauses of Section 8 of Article I (referring to revenue, finance and currency) as the basis for this alleged power. (*Norman v. Baltimore & Ohio R. Co.*, 294 U. S. 240, 303.)

However, the so-called fiscal power does not exist as an incidental necessary power if the power to which it is allegedly incidental is not delegated to Congress. (Control of local production.)

The respondent would avoid this obvious principle by arguing that the Corporation has the power to lend money to producers of cotton and, in order to preserve and protect these loans, it may curtail the production of commodities upon which the loans were made.

The same argument was presented to this Court in the *Butler* case, supra. (Government's Brief, pp. 241-262.) However, this Court, deeming that the essential purpose of the act there in question was to control local production of commodities refused to accept the argument. Here the essential and primary function of the respondent is not to loan money, but rather to invade a field reserved to the states. It is being used as a medium to acquire control of production of products. In the *Butler* case, supra, the Federal Government asserted that the A.A.A. of 1933 could be justified under the so-called "fiscal powers" to preserve the credit structure of the nation. However, this Court said that Congress could not, under the pretext of spending to promote the general welfare, invade rights reserved to the respective states. Here, as in the *Butler* case, the so-called fiscal power must be derived from the power to spend for the general welfare. It is also true that here, as in the *Butler* case, the Federal Government cannot, under the pretext of exercising "fiscal powers" derived from the general welfare clause, exercise a power reserved to the states by the Tenth Amendment.

The primary purpose of the respondent is not to loan money, but, as we have heretofore established, to

control local productive activity through the medium of loans which are made upon the condition that production is to be curtailed.

It is true that we have not questioned the right of the Federal Government to make loans to producers. But we do not in any way admit by what we have said herein that mere loaning, as such, can be justified under the general welfare clause, or any other delegated power. We have not chosen to make that argument herein because we feel that it is obvious that the loaning activities of respondent are merely a means used to effectuate its primary purpose, i. e., to act as a means of acquiring control of production. If the Federal Government has the power to loan money (without imposing conditions) as an exercise of their power to spend for the purpose of promoting the general welfare, we will be well on our way to a destructible union of destructible states. Heretofore, whenever any corporation (Bank of the United States, Federal Land Banks, War Finance Corporation) has been held to be constitutionally created, the decision has been based upon the theory that the lending of money was merely incidental to some lawfully delegated power which was being exercised. (*Smith v. Kansas City Title Co.,* 255 U. S. 180, 211; *McCulloch v. Maryland,* 4 Wheat. 316; *Ashwander v. T. V. A.,* 297 U. S. 288.)

The respondent is now asking this Court to hold that the Federal Government can invade a field reserved to the respective states on the theory (not accepted in the

Butler and *Schechter* cases) that it can spend money in aid of agriculture (by making so-called loans) and thereby promote the general welfare.

Counsel also asserted that the creation of the respondent may be justified as an exercise of the commerce power. The theory adopted by counsel is that production control can be justified on the principle (1) that the plenary power of Congress over commerce gives Congress the power to control such production, or on the principle (2) that its control is incidental to its power to control interstate marketing.

To counteract our reliance upon the articles of incorporation of respondent, the declared policy of the A.A.A. of 1933 and the N.I.R.A., the language of note and loan agreement, the provisions of Section 302 (C and F) of the A.A.A. of 1938, and Executive Order No. 6340, the respondent referred to Section 2 and Section 341 of the latter act. We admit that Sections 2 and 341 of the A.A.A. of 1938 disclose that *one* of the purposes of that act was to control interstate marketing of agricultural products which is within the commerce power granted to Congress (*Mulford v. Smith,* 307 U. S. 38, 47), but that purpose is only one of three purposes for which the A.A.A. of 1938 was enacted, i. e., soil conservation (Sections 102-104), production control (Section 302), and the marketing control. (Sections 311-355.)

Sections 311-314 of the A.A.A. of 1938 were upheld in the *Mulford* case because:

> "* * * The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. * * *" (p. 47.)

However, we ask the Court to note that we have established by reference to (a) pertinent statutes, (b) an executive order, (c) document creating the respondent and (d) document used by it in its business, that respondent *was* created solely for the purpose of controlling production. Respondent limits the acreage that may be planted or produced. Respondent imposes a penalty on those producers who do not comply in that it (1) will not loan to non-cooperators or (2) they will take a deficiency judgment against non-cooperators.

The *Mulford* case, supra, was dealing only with the marketing features of the Act, and not with production control provisions found in Section 302. It is obvious that the Court in the *Mulford* case was still of the opinion, as it was in the *Butler* case, that Congress does not have the power to control local productive activity, through the pretext of exercising a power delegated to Congress (general welfare or commerce power).

Also see:

Schechter Corp. v. U. S., 295 U. S. 495.

Counsel asserted in an attempt to avoid the compelling force of the *Butler* case, that the provisions of

the A.A.A. of 1933 did not purport to regulate commerce. Their reliance on this statement is not apparent when the declared policy of the Act is compared with that of the N.I.R.A. and A.A.A. of 1938. There can be no question but that Congress and its advisors believed that the A.A.A. of 1933 was adopted in the exercise of the commerce power. It is true that the Government did not attempt to argue the commerce power, but that was an afterthought forced upon them by the Schechter decision.

We do not contend that Congress cannot control interstate shipping or marketing. We are merely contending that Congress cannot control local production, as attempted herein, either directly or indirectly.

Every decision heretofore rendered by this Court supports our contention herein.

Respondent also attempted to justify its existence under the so-called "general welfare power" upon the theory that Congress has power to provide for the general welfare by providing appropriate agricultural credit measures and incidentally control local production.

At the outset we state that it is our understanding that there is no "general welfare power", but rather that the power to tax is limited by the general welfare clause.

This is the same argument that was presented to and refuted by the Court in the *Butler* case. The Court definitely held that Congress could not, under the pre-

text of spending for the general welfare, invade a field reserved to the states, i.e., production control.

In *Labor Board v. Jones & Laughlin,* 301 U. S. 1, the Court, at pages 30 and 40, approved and distinguished the *Schechter* and *Carter Coal* cases, supra.

We particularly call the Court's attention to the questions of the Court in the *Jones & Laughlin* case and counsel's answers thereto relative to this problem, which are reported in 301 U. S. 1, 738.

(d) The subsequent congressional acts purporting to extend the existence of the respondent did not validate its creation or existence.

Counsel for respondent apparently admitted that the respondent was unlawfully created, for they made no attempt to refute our contention in that regard in the Circuit Court of Appeals. Their whole argument was directed to *the alleged present* (1) existence (2) purposes and (3) functions of respondent.

Therefore, it now becomes necessary to determine if the *present* existence, purposes and functions of respondent are different from the *original* existence, purpose, and functions of the Corporation.

The President on October 16, 1933 (acting pursuant to purported power given by Section 2 of N.I.R.A.) allegedly authorized the creation of the Corporation by Executive Order No. 6340. (Exhibit D.)

Executive Order No. 6340 provided in part as follows:

> "* * * And whereas, in order, effectively and efficiently, to carry out the provisions of said Acts

> (A.A.A. of 1933 and N.I.R.A.) it is * * * necessary that a corporation be organized * * * to accomplish the purposes of said Acts. * * *"
>
> "Now, therefore, *under and by virtue of the authority vested in me by the National Industrial Recovery Act* * * * it is hereby ordered that an agency, * * * a corporation, * * * be created * * * to be named the Commodity Credit Corporation." (Emphasis added.)

On the 17th day of October, 1933, respondent filed its certificate of incorporation with the Secretary of State of the State of Delaware. (Exhibit B, Appendix, p. 15.)

The third paragraph of this certificate specified, *inter alia,* the following as the purposes of the corporation:

> (a) To effectuate the purposes of the A.A.A. of 1933 and N.I.R.A. and amendments thereto;
>
> (c) To cooperate in any plan which provides for reduction in the production of agricultural commodities;
>
> (d) To engage in any activity in connection with the production of agricultural products.

(The third article of the certificate of incorporation has never been amended in any respect material herein.)

Section 2(c) of N.I.R.A. provided that all agencies created thereunder were to cease to exist on June 15, 1935.

We believe that we have heretofore established that the Corporation was not constitutionally created. Let us now observe what transpired after October 17, 1933.

On January 31, 1935, Congress purported to extend the life of the Corporation to April 1, 1937. (Exhibit E, Appendix, p. 40.)

(We note that the *Schechter* and *Butler* cases, supra, had not been decided as of this date.)

On January 26, 1937, its life was purportedly extended until June 30, 1939. (Exhibit F, Appendix, p. 41.)

On March 13, 1939, Congress purported to extend its life to June 30, 1941. (Exhibit G, Appendix, p. 42.)

On February 16, 1938 Congress enacted the A.A.A. of 1938. (52 Stats. 31.) This act is, contrary to respondent's contention, pertinent herein, because the record discloses that "* * * in the case of cotton on which the Commodity Credit Corporation had made such advances to producers between the 7th day of March, 1938, and the 21st day of June, 1938, the advances were in some instances made before the levy of assessment. * * *" (R. 15.) In other words, the respondent did make loans on the cotton in question after February 16, 1938.

Title I of N.I.R.A. was not amended after 1933 and the A.A.A. of 1933 was not amended in any respect material herein.

The respondent contends that the present existence of the Corporation is different from its original existence on the theory that the 1935, 1937 and 1939 acts, supra, which extended its existence to June 1941, were, in effect, acts of ratification. We believe that this argument is unsound because:

(a) Those acts are mere casual references and not acts of ratification;

Isbrandtsen-Moller Co. v. U. S., 300 U. S. 139, 147, 148;

(b) Congress cannot ratify what it could not originally authorize;

Swayne & Hoyt, Ltd. v. U. S., 300 U. S. 297;
U. S. v. Butler, 297 U. S. 1, 78;

(c) The so-called acts of ratification constitute an unlawful delegation of legislative power to administrative officers and agencies;

Panama Refining Co. v. Ryan, 293 U. S. 388;
Mulford v. Smith, 307 U. S. 38.

The corporations (prior to 1933) referred to in our foreword, supra, have all been created by acts of Congress which specifically mentioned the policy and standards of the Corporation created and also expressly outlined its corporate organization.

The respondent further contends that the present purposes and functions of the Corporation are different from those purposes and functions which were originally given to the Corporation.

We do not see how this argument can be sustained when it is noted that:

(a) The articles of incorporation of respondent have never been materially changed;

(b) The acts, whose purposes it was intended to effectuate, have never been materially amended;

(c) The A.A.A. of 1938 is not an amendment of the A.A.A. of 1933 or the N.I.R.A. but rather an amendment of the Soil Conservation and Domestic Allotment Act. The A.A.A. of 1938 had three purposes, to-wit:

(1) Soil conservation (Sections 102-104);

(2) Control of local agricultural production through loans made by the respondent upon the condition that production be curtailed (Section 302);

(3) Regulation of interstate marketing of agricultural products. (Sections 311-355.)

The second purpose referred to above is merely a continuation of its original purpose. (See paragraph 8 of Exhibit C, Appendix, p. 34.)

When we consider (1) the respondent was created to effectuate the purposes and policies of the A.A.A. of 1933 and the N.I.R.A. (supra p. 7 and Appendix, p. 9) which have been declared not to be within the delegated powers of Congress (*Schechter* and *Butler* cases, supra); (2) the provisions of the note and loan agreement (paragraphs 5 and 8, Appendix, pp. 32, 34)

which clearly show the unlawful condition attached to the loan; (3) the language of Section 302 (C. and F.) (Appendix, p. 9); (4) the articles of incorporation (Appendix, p. 15), and (5) Executive Order No. 6340 (Appendix, p. 36), there cannot be any question but that the present and original purposes and functions of the respondent are identical. The history of the respondent and congressional acts clearly disclose the continuation of the original unlawful purpose of the corporation.

The provisions of the note and loan agreement and Section 302 of the A.A.A. of 1938 are not, as contended by respondent, inconsistent. Both of them clearly disclose the intention of the respondent to curtail local production of agricultural commodities; the former by waiving a deficiency if cooperation is given and the latter by refusing to make a loan unless cooperation is promised. Section 302(h) would allow a deficiency to be taken if the promise of cooperation was made in bad faith.

II. PERSONAL PROPERTY PLEDGED TO THE RESPONDENT DOES NOT "BELONG TO" THE RESPONDENT.

We are assuming, arguendo, herein, that (1) the respondent was lawfully created, and (2) that petitioners cannot tax property belonging to the respondent.

The taxes in question were all levied on personal property located in Fresno County, California, on the first Monday in March, 1938. They were assessed in

the name of "Unknown" *producers* of the cotton and not in the name of the respondent or the United States. *There was no tax assessed against* the respondent or the United States.

Section 8 of Article XIII of the Constitution of the State of California requires that the legislature shall by law require the taxpayer to provide an annual statement to the county assessor setting forth all property in his possession or control as of the first Monday in March. Said section provides as follows:

> "The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March."

Section 3628 of the Political Code of the State of California, the legislative enactment called for by Section 8 of Article XIII, supra, provides as follows:

> "Except as otherwise provided in the Constitution of this State all taxable property shall be assessed in the county * * * in which it is situated. * * * The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation * * * and must assess such property to the persons by whom it was *owned or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding* * * *." (Emphasis ours.)

It has been determined that Section 8 of Article XIII and Section 3628 of the Political Code clearly designate the time *when the taxable status of property, in California, becomes fixed.*

See

Dodge v. Nevada National Bank, 109 Fed. Rep. 726, at pp. 731-732;

East Bay Municipal District v. Garrison, 191 Cal. 680, 690, 218 Pac. 43.

Section 3716 of the Political Code of the State of California gives to a tax the effect of a judgment against the owner of the property. Section 3821 of the Political Code of the State of California authorizes the assessor of a county to seize and sell *any* personal property owned by the person against whom the tax was assessed.

We point out to the Court that the tax was not levied on any interest or property which the Corporation may claim to have in the cotton. On the other hand the assessment was made on the producers and owners of the cotton on the first Monday of March, 1938. We further contend that the levy of said assessment did not impede any activity of the federal government. It is our position that the Corporation did not acquire by virtue of the pledge any "property" in the cotton, as such. It did, we admit, acquire a "special property" which amounts merely to the right to possession of the pledged property and the right to sell the same in case the pledgor does not repay his debt. This "special property" was not taxed herein.

In support of our contentions herein we call the Court's attention to the following statutory provisions of the State of California and decisions of various Courts.

Section 2986 of the Civil Code of the State of California provides as follows:

> "Pledge is a deposit of personal property by way of security for the performance of another act."

Section 2987 of the Civil Code of the State of California provides as follows:

> "Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge."

In *City Bank Farmers' Trust Co. v. Bowers,* 68 Fed. (2d) 909, the Court said, at page 913:

> "* * * The interest of a pledgee has indeed somewhat baffled common lawyers, but it is usually said that 'title' remains in the pledgor, and that the pledgee has only a 'special property'; (citing cases) * * * The pledgee in substance has no more than a power to sell the pledge upon default and to recoup * * *."

In *Bank of America etc. Ass'n v. Figueroa,* 218 Cal. 281, 286 (22 Pac. (2d) 712), the Court said:

> "* * * As pledgee of the security the Bank of America did not acquire title thereto * * *."

In *St. Paul Fire & M. Ins. Co. v. Garza County W. & M. Ass'n,* 93 Fed. (2d) 590, 592, the Court said:

"* * * Its claim that as pledgee the Commodity Credit Corporation is owner will not do * * *."

"In *Arcola Sugar Mills Co. v. Burnham,* 5 Cir., 67 Fed. (2d) 981, we pointed out that, while a pledgee has some of the rights of an owner, he is, until in the manner prescribed in the pledge he has become the owner, still a pledgee."

In 21 *Ruling Case Law,* at pages 649, 650, 651, it is said:

"With regard to the respective rights of the parties to a contract of pledge it is well settled that the general property in the thing pledged remains in the pledgor (citing Brewster v. Hartley, 37 Cal. 15, and Anderson v. Pacific Bank, 112 Cal. 598, 44 Pac. 1063), and only a special property vests in the pledgee. (Citing California cases.) While he has the right to retain the property pledged until the debt for which it was pledged is fully satisfied or has been otherwise discharged the pledgee acquires no interest in the property except as a security for his debt * * * The general property in the pledge remains in the pledgor after as well as before default. * * *"

Also see:

Talty v. Freedman's Savings & Trust Co., 93 U. S. 321, 324;

Yeatman v. Savings Institution, 95 U. S. 764, 766.

In *People v. Kempner,* 139 N. Y. S. 440, 443, the Court defines "special property" which is acquired by the pledgee as being the right to possession of the

pledged property and the right to sell the pledged property in case of a default on the part of the pledgor.

In *Rissman v. National Thrift Corporation,* 139 Cal. App. 447, 34 Pac. (2d) 230, the Court cited with approval the case entitled *Simansky v. Clark,* 147 Atl. 205 (Me.), wherein the Supreme Court of the State of Maine defined the respective rights of a party to a pledged contract as follows: The general property remains in the pledgor and the pledgee does not acquire any interest in the pledged property, save as security for the payment of his debt.

In 21 *California Jurisprudence,* at pages 328, 329, 330, it is said:

> "The general rule that notwithstanding any agreement to the contrary a lien or a contract for a lien transfers no title to the property subject to the lien, is applicable to pledges. While a pledgee has a special property or interest in a pledge, the title or general property remains in the pledgor * * * The pledgee has a special property in a pledge which entitles him to possession until discharge of the obligation secured, and to protect which he may maintain detinue, replevin or trover against anyone who has no higher equitable or other superior right. * * *"

In 16 *California Jurisprudence,* page 315, it is said:

> "* * * A mortgage lien is not an interest in the property, but a mere lien thereon. Therefore, one having naught but a mortgage lien may not quiet title as against the owner of the legal title."

In *Robinson v. Raquet,* 1 Cal. App. (2d) 533, 544, 36 Pac. (2d) 821, the Court said:

> "* * * It has been repeatedly held that where personal property is pledged the general property and the title remain in the pledgor, subject only to a lien in favor of the pledgee for the amount of his debt."

Also see:

White v. Ross, 36 Cal. 414, 428;

Brewster v. Hartley, 37 Cal. 15, 25, 99 Am. Dec. 237;

Cross v. Eureka Lake etc. Canal Co., 73 Cal. 302, 306, 14 Pac. 885, 2 Am. St. Rep. 808;

Sparks v. Caldwell, 157 Cal. 401, 109 Pac. 276;

People v. Robinson, 107 Cal. App. 211, 220, 290 Pac. 470;

Tracy v. Stock Assur. Bureau, 132 Cal. App. 573, 579, 23 Pac. (2d) 41;

Civil Code, Section 2888.

In defining the rights of parties under a pledge we realize that the Courts have indulged freely in the use of words; but nevertheless, upon a careful scrutiny and thorough consideration of the authorities, we submit that the Courts consistently hold that no interest is acquired by the pledgee in the pledged property, as such, that is to say, no interest amounting to *ownership* in the property is acquired.

See:

Cottonwood-Anderson Irrigation Dist. v. Klukkert, 13 Cal. (2d) 191, 88 Pac. (2d) 685;

State Land Settlement Board v. Henderson, 197 Cal. 470, 480, 241 Pac. 560;

R.C.A. Photophone, Inc. v. Huffman, 5 Cal. App. (2d) 401, 42 Pac. (2d) 1059;

San Diego v. Davis, 1 Cal. (2d) 145, 33 Pac. (2d) 827.

Obviously, therefore, inasmuch as the petitioners are not subjecting to taxation the "special property" of the Corporation, the doctrine of constitutional implied immunity is not applicable; and accordingly, it logically follows that the cotton, which is otherwise taxable, does not become non-taxable because the Commodity Credit Corporation, an alleged instrumentality of the federal government, has assumed the relationship of pledgee to the cotton. In other words, the petitioners are not attempting to collect taxes on any property "belonging to" the respondent.

The Court is bound by the statutory and case law of the State of California which establishes that a pledgee of tangible personal property does not acquire any interest in pledged property, as such.

See:

Erie Railroad Co. v. Tompkins, supra.

Once it is determined by this Court that the Corporation did not acquire any property in the cotton as such, the Court must, regardless of its opinion on the other points raised herein, uphold the right of the appellants to levy the tax in question. The tax would then be held to be imposed upon property of a private individual located within the jurisdiction of the County

of Fresno, State of California, and there could not possibly be any burden imposed upon the Corporation or the United States.

III. THE PETITIONERS MAY LAWFULLY LEVY A TAX UPON COTTON PLEDGED TO THE RESPONDENT.

We are assuming, arguendo, that (1) respondent was lawfully created, and (2) is now operating under constitutional authority, and (3) that the cotton, taxed by petitioners herein, belongs to the respondent.

The question is then presented whether the petitioners could lawfully impose a *non-discriminatory property tax* upon that cotton which was situated in the County of Fresno on the first Monday in March, 1938, i.e., March 7, 1938, (*tax day*).

At the outset we wish to call the Court's attention to the fact that some of the cotton in question was not *pledged* to the respondent and the loans thereon were not made until *after* "tax day". Therefore, there can be no question as to petitioners' right *to tax* any cotton under those circumstances. The question is presented only as to that cotton *pledged before* or on "tax day".

In *Pitman v. H. O. L. C.*, 308 U. S. 21, 60 S. Ct. 15, 18, this Court said:

> "We assume here, as we assumed in Graves v. New York ex rel. O'Keefe, 306 U. S. 466, that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the congressional power and that the activities of the Corporation through which the national government lawfully

> acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments."

In other words, the Court did not decide the question presented herein. However, as we shall hereinafter attempt to show, the logic and reasoning adopted by the Court in that case strongly indicate that if the question involved herein had been presented in that case, it would have been decided as contended by petitioners herein.

The federal government and corporations created under state laws are, it must be noted, separate and distinct entities.

> *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U. S. 381, 59 S. Ct. 516;
>
> *U. S. Shipping Board Emergency Fleet Corp. v. Wood*, 274 Fed. 893, 899, 900, 901; aff'd 258 U. S. 549, 570;
>
> *U. S. v. Marxen*, 307 U. S. 200, 203, 59 S. Ct. 811, 813.

(a) Immunity from state taxation will not be implied.

In *Graves v. O'Keefe*, 306 U. S. 466, 479, 59 S. Ct. 595, 598, the Court established the following test in determining whether a federal instrumentality was exempt from state taxation:

> "* * * Congress has given no information for any purpose either to grant or withhold immunity from State Taxation of the salaries of the Corporation employees, *and the Congressional intention*

is not to be gathered from the Statutes by implication. See C. F. Baltimore National Bank v. State Tax Commissioner, 297 U. S. 209 * * *." (Emphasis added.)

Public Act No. 442 of the 75th Congress (approved March 8, 1938, 52 Stats. 108 (Appendix p. 14), provides, in part, as follows:

> "Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from federal, state, municipal and local taxation. (Except surtaxes, estate, inheritance, and gift taxes.) The Commodity Credit Corporation, including its franchise, its capital, reserves and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, County, municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to state, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

It is to be noted that counsel for respondent conceded, as they must, that neither this or any other congressional act expressly exempts the securities held by the respondent for repayment of its loans from state taxation.

We submit that *Graves v. O'Keefe,* supra, *Baltimore Natl. Bank v. State Tax Commisioner,* 297 U. S. 209, *Helvering v. Gerhardt,* 304 U. S. 405, 411 N, and *Tradesmen's Nat'l Bank v. Oklahoma Tax Commissioner,* ..... U. S. ....., 60 S. Ct. 688, 691, establish the principle that immunity of federal instrumentalities from state taxation will not be implied.

In passing we note that *Helvering v. Gerhardt,* supra, laid down as a second test *the power of Congress to create the instrumentality.* We are assuming, arguendo, under this point that the respondent meets that test. However, see Point I, supra.

(b) The tax imposed by petitioners herein does not unlawfully burden the United States.

It is our position that (1) in the absence of express exemption a federal corporation created under the laws of a state (2) having purposes other than the government's is not immune from (3) a non-discriminatory property tax unless (4) it can show that the tax will burden the United States.

At pages 480, 481 of the *O'Keefe* case, it is said:

> "* * * The present tax is a non-discriminatory tax on income applied to salaries at a specified rate. It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds and not from

> the funds of the government, either directly or indirectly. The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable (citations), *and the only possible basis for implying a 'constitutional immunity' from state income tax of the salary of an employee of the national government or of a governmental agency is that the economic burden of the tax is in some way passed on so as to impose a burden on the national government tantamount to an interference by one government with the other in the performance of its functions.* * * *'' (Emphasis added.)

Also see

Utah v. Van Cott, 306 U. S. 511.

The fact that the expenses of the one government might be lessened if all those who dealt with it were exempt from taxation by the other was not thought to be an adequate basis for tax immunity in the following cases:

Metcalf and Eddy v. Mitchell, 269 U. S. 514;
Burnett v. Jergens Trust, 288 U. S. 508;
James v. Dravo Contracting Co., 302 U. S. 134;
Helvering v. Mountain Producers Corporation, 303 U. S. 376.

It must be remembered that the tax which the petitioners have levied upon the cotton in question was not imposed upon the respondent but upon the producers of the cotton. *During the course of this litigation some producers have repaid the Commodity Credit Corporation.* It is inconceivable to us that any

Court would hold that the petitioners cannot tax cotton which is physically located within its boundaries and has a taxable status on the first Monday in March merely because the Corporation has made a loan to the producer of the cotton and as security therefor has received a pledge of the cotton. It may well happen that on the day before the first Monday in March of any particular year the producer of cotton could take a loan from the Corporation and pledge the cotton as security therefor and on the day after the first Monday in March repay that loan to the Corporation and the crop (which will receive the protection of the County of Fresno throughout the following ensuing year and for which protection other property within that community has to pay its share of governmental expense by paying taxes on such property) will escape its share of the tax burden imposed by the petitioners for rendering protection to all property and owners thereof within its boundaries. We submit that the implied immunity doctrine was never intended to be extended that far. Assuming for the moment, that the petitioners in levying a tax upon the producer of the cotton, is to some extent levying a tax upon property belonging to the Commodity Credit Corporation we submit that the imposition of that tax in nowise constitutes an unlawful burden upon the United States so as to bring the tax within the prohibited limits of the implied immunity doctrine.

In *United States Spruce Production Corporation v. Lincoln County, et al.*, 285 Fed. 388, 390, 391, it is said:

> "The cases seem to be uniform in support of the principle, which is concretely stated in Thomson v. Union Pacific Rd., 9 Wall. 579, 591 (19 L. Ed. 792), in the following language: 'We fully recognize the soundness of the doctrine that no state has a "right to tax the means employed by the government of the Union for the execution of its powers". But we think there is a clear distinction between the means employed by the government and the property of the agents employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means. * * *'."

The language of the headnote in *Railroad Co. v. Peniston,* 85 U. S. 5, is pertinent:

> "The exemption of agencies of the Federal Government from taxation by the states is dependent not upon the nature of the agents, nor upon the mode of their constitution, nor upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or hinder the efficient exercise of their power."

In *Clallam County v. U. S.,* 263 U. S. 341, 344, 345, it is said:

> "* * * The State claims the right to tax on the ground that taxation of the agency may be taxation of the means employed by the government and invalid upon admitted grounds, but that taxation of the property of the agent is not taxation of the means. We agree that it 'is not always, or

generally, taxation of the means', as said by Chief Justice Chase in Thomson v. Pacific Railroad, 9 Wall. 579, 591. But it may be, and in our opinion clearly is when as here not only the agent was created but all the agent's property was acquired and used, for the sole purpose of producing a weapon for war. This is not like the case of a corporation having its own purposes as well as those of the United States and interested in profit on its own account. The incorporation and formal erection of a new personality was only for the convenience of the United States to carry out its ends. *It is unnecessary to consider whether the fact that the United States owned all the stock and furnished all the property to the corporation taken by itself would be enough to bring the case within the policy of the rule that exempts property of the United States* * * * Van Brocklin v. Tennessee, 117 U. S. 151. *It may be that if the United States saw fit to avail itself of machinery furnished by the State it would not escape the tax on that ground alone.* But when we add the facts that we have recited we think it too plain for further argument that the tax could not be imposed. See United States Spruce Production Corporation v. Lincoln County, 285 Fed. 388; United States v. Coghlan, 261 Fed. 425; King County v. United States Shipping Board Emergency Fleet Corporation, 282 Fed. 950. We answer the second question, No." (Emphasis added.)

The United States Supreme Court in its recent decisions rendered during its October term, 1938, clearly indicated that it is now of the opinion that the mere fact there exists an instrumentality of the federal

government is not conclusive of the question whether the implied *constitutional* immunity doctrine prevents taxation by a state of that instrumentality. The Court now requires proof of an actual burden upon the national government which interferes with the operation of an essential governmental function. Assuming as we have on this point that the Commodity Credit Corporation did "acquire some property" in the cotton in question herein, we fail to see how a local tax on the actual value of the cotton could possibly burden the United States. A nondiscriminatory tax of this nature must be borne equally by all property located within the boundaries of a taxing agency. Unless this doctrine of implied immunity is fairly construed we can see that the taxing powers of the various states in the Union will be materially crippled by virtue of the present tendency of the national government to create more and more corporations and to extend to them functions which were hitherto unknown to the federal government. The petitioners in taxing this property did not necessarily tax the means adopted by Congress to effectuate a power (which we will assume to exist) delegated to the federal government. As previously pointed out, taxation of the means is that which is prohibited and not the taxation of property, unless taxation of the property is also taxation of the means.

The effect upon the state and its political subdivisions if respondent's theory of immunity is upheld, is well expressed by Chief Justice Chase in *Thomson v. Union Pacific Rd. Co.*, 9 Wall. 579, 591, where he said:

"We perceive no limits to the principle of exemption which the complainant seeks to establish. It would remove from the reach of state taxation all the property of every agent of the government. Every corporation engaged in the transportation of mails or of government property of any description, by land or water, or in supplying materials for the use of the government, or in performing any service of whatever kind, might claim the benefit of the exemption. The amount of property now held by such corporation, and having relations more or less direct to the National government and its service, is very great. And this amount is continually increasing; *so that it may admit of question whether the whole income of the property which will remain liable to State taxation, if the principle contended for is admitted and applied in its fullest extent, may not ultimately be found inadequate to the support of the State government.* * * *" (Emphasis added.) (*Government had a mortgage in this case.*)

Further, at pages 590, 591, the Court said:

"We do not think ourselves warranted, therefore, in extending the exemption established in the case of McCulloch v. Md. beyond its terms. *We cannot apply it to the case of a corporation deriving its existence from state law exercising its franchise under state law, holding its property within state jurisdiction and under state protection.* * * *" (Emphasis added.)

During the last seven years there have been created many corporations to perform functions hitherto unknown and unrelated to the federal government, each

corporation lending its money to citizens residing in the various states of the Union on all types of commodities, businesses and property. If the doctrine of immunity set forth by the respondent is upheld by this Court it may well cause the various states of the Union to ponder whether the remaining property within their boundaries can sustain the resulting burden placed upon it in sustaining the operation of those governments. It may well be that the various states may be forced to limit their governmental activities and thus the national government will indirectly be responsible for breaching the constitutional guarantee given to every state that it shall maintain a republican form of government. *The denial of the power to impose a nondiscriminatory tax involves the power to destroy.*

In *National Bank v. Commonwealth,* 9 Wall. 353, 362, the Court observed that:

> "The principle we are discussing (tax exemption) has its limitations, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the Federal Government are only exempted from state legislation, so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states."

Again, when California levied taxes upon a railroad built largely with federal funds, performing federal services, the Court while denying the right of the state to tax the franchise, upheld the tax upon the property of the railroad and said:

> "There is a clear distinction between the means employed by the government and the property of the agent employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agency is not always, or generally, taxation of the means."

In *Union Pacific Rd. Co. v. Peniston,* 85 U. S. 5, at p. 30, the Court said:

> "It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason also inhibited by the constitution. To hold that would be to deny to the States all powers to tax person or property."

In those cases where the taxation of the property of the agent has been upheld it has been upheld because it was not regarded as a "tax" upon the "means" employed by the government in carrying out legitimate purposes.

In *McCulloch v. Maryland,* supra, we find that the fundamental basis upon which the Court relied, in denying a state the right to levy a tax upon bank notes of a national bank, was that the tax *was discriminatory in nature* and was primarily designed to destroy an instrumentality of the federal government which was created as a means to serve an essential governmental power.

In the Circuit Court of Appeals counsel for respondent stated, in their brief (p. 31), that:

> "Payment of a tax, which neither in terms nor in fact marks the Government transaction as the object of the levy, will not bring the operations of the Government to a halt. For this reason the United States as amicus curiae urged in James v. Dravo Contracting Co., 302 U. S. 134, that a gross-receipts tax upon the federal contractor should be sustained, even though the full amount of the tax burden would ordinarily be passed on to the Federal Government."

The payment of the tax involved herein does not, in terms or fact, mark the government transaction as the object of the levy. Therefore the fact that the respondent may be forced to pay the producer's tax and seek reimbursement therefor is immaterial.

James v. Dravo Contracting Co., supra;

Graves v. O'Keefe, supra;

Buckstaff Bathhouse Co. v. Commr., ... U. S. ....., 60 S. Ct. 279;

Stone v. Interstate Natural Gas Co., 103 Fed. (2d) 544, 549, ... U. S. ..... (12/11/39).

We submit that *Graves v. O'Keefe* is controlling herein.

We ask why should there be any distinction between an individual, a natural person, and a corporation, an artificial person. In the *O'Keefe* case an individual was engaged in federal functions, just as we are assuming herein that the respondent is engaged in federal functions. We believe that the logic and reasoning

of the *O'Keefe, Van Cott* and *Gerhardt* cases are equally applicable to the respondent herein; ergo, Congress not having expressly granted immunity, none will be applied.

We submit that:

(1) Subject to the "principle" stated in *Natl. Bk. v. Commonwealth,* supra, and in many later cases Congress has power expressly to exempt a lawfully created federal corporation from state taxation;

(2) That persons, whether natural or artificial, engaged in carrying out governmental functions are not entitled to the same *constitutional* immunity from state taxation as that adhering to the national government;

(3) That persons, whether natural or artificial, engaged in carrying out governmental functions are not immune from state taxation unless Congress has expressly granted them exemption or, when Congress is silent, the imposition of the particular tax in question will unlawfully burden the United States.

The record in the instant matter will not support a claim that the particular tax in question burdens, in any way, the United States.

We therefore contend that the petitioners have the right to levy and collect the tax involved herein without regard to the alleged interest of the respondent in the cotton in question.

IV. PERSONAL PROPERTY PLEDGED TO THE RESPONDENT DOES NOT "BELONG TO" THE UNITED STATES.

The question becomes pertinent only if this Court should decide (1) that respondent was validly created, and (2) the cotton belongs to it, and (3) that petitioners' tax does not violate the "Implied Immunity Doctrine".

It is our contention that the cotton in question does not "belong to" the United States within the purview of Section 1 of Article XIII of the Constitution of California and Section 3607 of the Political Code which in effect provide that property belonging to the United States is exempt from local property taxation.

We contend that the Corporation and the United States are separate and distinct entities.

See:

Keifer & Keifer v. Reconstruction Finance Corp., supra;

U. S. Shipping Board Emergency Fleet Corp. v. Wood, supra;

U. S. v. Marxen, supra.

While we may assume, arguendo, that some "property" in the cotton "belongs to" the respondent, we submit that none of it "belongs to" the United States within the purview of Section 1 of Article XIII of the California Constitution.

V. THE PETITIONERS MAY LEGALLY COLLECT A TAX LEVIED UPON PERSONAL PROPERTY, BY A TAX SALE, WITHOUT SELLING THE PROPERTY TAXED SUBJECT TO THE LIEN ACQUIRED BY THE RESPONDENT.

Under this point it is assumed, arguendo (as the Circuit Court of Appeals apparently did), that (1) the respondent was validly created and therefore has a lien on the cotton in question, and (2) that the petitioners lawfully imposed a tax on such cotton.

(a) Personal property taxes, in California, are inherently entitled to priority over PRIOR IN TIME private liens.

It is our first contention that a tax "ex proprio vigore" is entitled to priority in payment over any preexisting private lien holder.

See:

California Loan & Trust Co. v. Weis, 118 Cal. 489; 50 Pac. 697;

O'Dea v. Mitchell, 144 Cal. 374, 381, 77 Pac. 1020, 1022;

Woodil & Hulse Elec. Co. v. Young, 180 Cal. 667, 669, 670, 182 Pac. 422, 424;

San Mateo County Bank v. Dupret, 124 Cal. App. 395, 396, 12 Pac. (2d) 669, 670.

The case relied upon by the Circuit Court, i.e., *Guinn v. McReynolds,* 177 Cal. 230, 232, 170 Pac. 421, 422, is in conflict with the decisions which we have heretofore cited.

(b) Section 3716 of the California Political Code gives personal property taxes a statutory priority over private liens.

Assuming, arguendo, that taxes are not inherently entitled to priority to submit that Section 3716 of the California Political Code creates a statutory priority.

The Circuit Court of Appeals failed to discuss or answer this contention. Its decision is limited to two points, i.e., (1) taxes are not inherently entitled to priority, and (2) personal property taxes are not a lien on the property taxed.

It is fundamental that a sovereign government may establish priority for a tax even though it does not make the tax a lien on the property taxed.

The federal government has two statutes that clearly illustrate this point.

Sections 3670 and 3671 of the Internal Revenue Code (formerly Revised Statutes 3186) provide for a lien for taxes and give it priority under certain circumstances.

Section 3466 (31 U. S. C. 191) of the Revised Statutes, on the other hand, establishes priority for federal taxes, under certain circumstances, irrespective of a lien.

See

New York v. Maclay, 288 U. S. 290;
Spokane Co. v. U. S., 279 U. S. 80;
U. S. v. Oklahoma, 261 U. S. 253.

We submit that Section 3716, Political Code, supra, establishes a priority for personal property taxes in California in the same manner that Section 3466, Revised Statutes, establishes priority for federal taxes. (Of course Section 3716 does not limit the priority to cases of insolvency, etc.) *Neither priority is dependent upon a lien.*

In *California Loan and Trust Co. v. Weis,* 118 Cal. 489, 494, 495, the Court said:

"'Sec. 3716. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.'

"After further provisions for the sale of the real property for all such delinquent taxes, it is provided:

"'Sec. 3788. The deed conveys to the grantee the absolute title to the land described therein * * * free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale.'

"No distinction is made by these laws between the lien which exists upon the land for the tax on personalty and the lien which exists for the tax upon the land itself. 'Every lien' created by this title remains until the taxes are paid or the property sold.

* * * * * * *

"It is held in Eaton's Appeal, 83 Pa. St. 152, that a statute which declares that a tax shall continue a lien 'until fully paid and discharged', ex proprio vigore makes the lien superior to that of a judgment obtained before the tax is levied. In this State we not only have language of similar import in Section 3716 of the Political Code, but that language is aided so as to remove the need of interpretation by Section 3788, which provides that the deed conveys the absolute title free from all encumbrances."

We submit that if the following language of Section 3716, Political Code, establishes priority for real property tax lien, to-wit:

> "* * * and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; * * * nor the lien removed *until taxes are paid on the property sold for the payment thereof*" (*Weis* case, supra), then it necessarily must follow that the following language of Section 3716, supra, establishes statutory priority for personal property taxes, to-wit: "Every tax has the effect of a judgment against the person, * * * the judgment is not satisfied * * * *until the taxes are paid or the property sold for the payment thereof* * * *"

If the italicized language of Section 3716 creates a statutory priority for real property tax liens (*Weis* case, supra) then it must also establish a statutory priority for personal property taxes. In reference to the statements of the Circuit Court (R. 49-50) in regard to the effect of such a conclusion, we wish to point out that the *priority referred to pertains only to the particular property taxed.*

We have never made any contention that, as stated by the Circuit Court (R. 49-50), the priority, which we submit exists, extends to any property other than the particular property taxed. While it is true that Section 3821, Political Code of California, gives the assessor the right to seize property other than tax delinquent property, the petitioners claim no priority thereon.

(c) Section 3716 of the California Political Code establishes a priority for the personal property tax lien created by a seizure, pursuant to Section 3821 of the Political Code, of the property taxed.

We are assuming herein that (1) taxes are not inherently entitled to priority in California and (2) that Section 3716 of the Political Code does not create a priority for a mere *tax claim*.

Section 3716 (Appendix p. 5) of the California Political Code clearly establishes a priority for any local ad valorem tax lien. (See cases cited in point V (a), supra.)

In *R. C. A. Photophone, Inc. v. Huffman,* 5 Cal. App. (2d) 401, 42 Pac. (2d) 1059 (hearing in Supreme Court denied), the Court decided that when personal property (taxed) has been seized, pursuant to Section 3821 of the California Political Code (Appendix p. 8), a lien attaches to the property taxed and seized.

We therefore submit that the lien, created by the seizure of the cotton in question, is entitled to priority over any lien respondent may have acquired.

(d) The lien acquired by respondent is in no better position than that acquired by a private individual.

The Federal Courts sitting within the territorial jurisdiction of a particular state are bound by the statutory laws of that state and the judicial interpretations of those statutes by the Appellate Courts of that state except in so far as there is involved in any particular case a congressional statute or a provision of the Federal Constitution.

Erie Rd. Co. v. Tompkins, supra.

Therefore, unless the respondent can establish that there is some congressional statute which gives the lien which it acquired by virtue of the pledge herein priority over any existing claim for personal property taxes levied by the petitioners herein or unless it can establish that some constitutional provision would prevent the imposition of the tax herein it is our position that the respondent would be in no different position than would be a private lien holder.

In *City of New Brunswick v. United States,* 276 U. S. 547, the Court gave effect to a statutory preference of a vendor's lien involved therein which was retained by the United States Housing Authority. However, in that case there was a congressional statute which expressly provided that the interests of the United States in the lands in question should remain a first lien on the lands involved therein. Inasmuch as the Constitution and laws passed pursuant thereto are the supreme law of the land, it naturally follows that the Court gave priority to the lien retained by the United States Government.

We submit that we have established that there is no congressional preference given to the pledgee's lien acquired by the respondent herein and further, that the county may levy the tax in the first instance on this property because it is entirely owned by a private individual and the Commodity Credit Corporation is in the same position as would be a private lien holder and that the personal property taxes levied herein by petitioners are entitled to priority in payment over any preexisting lien interests which the respondent may have herein.

Wherefore, it is respectfully submitted that a writ of certiorari should be granted herein and the cause reviewed by this Honorable Court and that the decision of the United States Circuit Court of Appeals for the Ninth Circuit should be reversed and that of the District Court of the United States for the Southern District of California, Northern Division, should likewise be reversed.

Dated, Fresno, California,
August 7, 1940.

Respectfully submitted,
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(Appendix Follows.)

Appendix

EXHIBIT "A"

I. PERTINENT STATUTES AND CONSTITUTIONAL PROVISIONS OF THE STATE OF CALIFORNIA RELATING TO THE ASSESSMENT AND COLLECTION OF PERSONAL PROPERTY TAXES.

Section 1 of Article XIII of the Constitution of the State of California provides, in part, as follows:

> "All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. * * * and further provided, that property * * * such as may belong to the United States * * * shall be exempt from taxation * * *." (Amendment adopted November 3, 1914.)

Section 8 of Article XIII of said Constitution provides as follows:

> "The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March." (Original section, Constitution of 1879.)

Section 9a of Article XIII of said Constitution provides:

> "The taxes levied for any current tax year upon personal property and assessments upon possession of, claim to, or right to the possession

of land and upon taxable improvements located on land exempt from taxation, which are not a lien upon land sufficient in value to secure their payment, shall be based upon the rates for taxes levied for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure the payment thereof. Nothing in this section shall be construed to prohibit the equalization each year of the assessment on such property in the manner now or hereafter provided by law." (Amendment adopted November 3, 1936.)

(NOTE: Many of the sections of the Political Code hereinafter referred to were amended in 1939. However, we here quote such sections as they read at the time the taxes here in question were assessed.)

Section 3627 of the Political Code of the State of California provides:

"All taxable property must be assessed at its full cash value, except that all notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, mortgages, and any legal or equitable interest therein of the classes taxable under the provisions of section 16 of article thirteen of the constitution of this state, shall be assessed at their actual value of property located in or having its situs in this state of the corporation by which such shares of capital stock are issued. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land of the same quality and similarly situated shall be assessed at the same value." (Statutes 1929, p. 126; in effect April 6, 1929.)

Section 3628 of said Code provides:

"Except as otherwise provided in the constitution of this state, all taxable property shall be assessed in the county, city, city and county, town, township, or district in which it is situated. Land shall be assessed in parcels, or subdivisions, not exceeding six hundred forty acres each and tracts of land containing more than six hundred forty acres which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Land sold by the state for which no patent has been issued, shall be assessed the same as other land, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the state as principal upon the purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid, nor shall anything herein release any person, firm, corporation or association from their duty to file the statement required by law. In assessing notes and solvent credits and equitable or legal interests therein, not secured by mortgage, deed of trust, contract or other obligation, where land situated within this state is pledged as security therefor, a deduction from the assessed value shall be made of such

debts including notes, unsecured by mortgage, deed of trust, contract or other obligation where land situated within this state is pledged as security therefor, as may be owing by such person, firm, corporation or association to bona fide residents of this state." (Statutes 1929, p. 126; in effect April 6, 1929.)

Section 3629 of said Code provides, in part, as follows:

"The assessor must exact from each person a statement, under oath, setting forth specifically all the real and personal property not exempt from taxation owned by such person, or in his possession, or under his control, at twelve o'clock meridian on the first Monday in March, and it is hereby required that such person shall file such statement with the assessor between the first Mondays in March and July of each year and at any time during, before or after such dates furnish such information or records for examination as may be required by the assessor to make a proper assessment; provided, however, that no assessment shall hereafter be rendered invalid by reason of the failure of the assessor to demand or secure the statement required by this section prior to the making thereof. Such statement shall be in writing, showing separately:

"1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

"2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

"3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent."

Section 3636 of said Code provides:

"If the name of the absent owner is known to the assessor, or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name. If unknown to the assessor, and if it does not appear of record as aforesaid, the property must be assessed to unknown owners." (Statutes 1891, p. 107; in effect March 14, 1891.)

Section 3650 of said Code provided, in part, as follows:

"The assessor must prepare an assessment book, with appropriate headings, as directed by the state board of equalization, in which must be listed all property within the county, and which shall show under the appropriate heads:

"4. All personal property, showing the number, kind, amount and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment."

Section 3716 of said Code provided, in part, as follows:

"Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed un-

til the taxes are paid or the property sold for the payment thereof provided, that the lien of every tax whether now existing or hereafter attaching shall cease to exist for all purposes after thirty years from the time said tax became a lien;"

Section 3717 of said Code provides, in part, as follows:

"Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m. of the first Monday in March in each year." (Amendments to Codes 1880, p. 16; in effect March 22, 1880.)

Section 3820 of said Code provides, in part, as follows:

"The Assessor shall have power to collect the taxes on all property when, in his opinion, said taxes are not a lien upon real property sufficient to secure payment of the taxes. * * *"

Statutes of California of 1903, page 130, as amended by Statutes 1921, page 352, provides:

"Section 1. Each county and city and county, may sue in its own name for the recovery of any and all moneys due or hereafter to become due as delinquent taxes or assessments upon any and all personal property, where no real property is assessed as security for the payment of such personal property taxes, or where in the judgment of the board of supervisors, there is not sufficient real property to secure the payment of such personal property taxes, whether the same be for county or city and county, and state purposes, or

either of them, and for all penalties and interest charges due upon said taxes for non-payment thereof.

"Sec. 2. Suit may be brought in like manner for the recovery of any and all county or city and county, or state moneys due or hereafter to become due as delinquent taxes or assessments upon any and all improvements when situated upon leased land when said land is exempt from taxation.

"Sec. 3. On the trial of any such suit the assessment roll of said county or city and county, or a copy of any entry therein duly certified, showing unpaid taxes or assessments against the defendant or his property, or, in cases where the defendant is sued in a representative capacity, against any person or estate or the property thereof which he represents, shall be prima facie evidence of the plaintiff's right to recover.

"Sec. 4. All actions now pending for the collection of such taxes may be carried on and prosecuted under the provisions and in accordance with this act.

"Sec. 5. All acts and parts of acts in conflict with this act are hereby repealed, but the method of collecting such taxes herein provided shall not be deemed to be the exclusive method, nor shall the provisions of this act in any manner abrogate or modify the provisions of sections three thousand eight hundred thirty-one or three thousand eight hundred ninety-nine of the Political Code of the State of California." (Statutes 1921, p. 352; in effect July 29, 1921.)

Section 3821 of said Code provided:

> "In the case provided for in the preceding section, at the time of making the assessment, or at any time before noon of the first Monday in March following the assessment, the assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed, or if no personal property can be found, then the assessor may collect the taxes by seizure and sale of the possession of, claim to or right to the possession of the land. The assessor must keep a record of the property so seized and sold." (Statutes 1937, p. 2369; in effect August 27, 1937.)

II. PERTINENT FEDERAL STATUTORY AND CONSTITUTIONAL PROVISIONS.

The Tenth Amendment to the United States Constitution provides:

> "Powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

Sec. 1 of Article I of the Federal Constitution provides:

> "All legislative powers herein granted shall be vested in a Congress of the United States."

Sec. 8 of Article I of the Federal Constitution provides:

> "Congress is authorized to make all laws which shall be necessary and proper for carrying into execution general powers."

Sec. 2 of Title I of the Agricultural Adjustment Act of 1933 (May 12, 1933, c. 25, 48 Stat. 31) provided the policy of Congress was:

> "To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of Agricultural commodities in the base period."

Sec. 11 (48 Stat. 38) of the A.A.A. of 1933 designated *cotton* as one of the "basic agricultural commodities".

Sec. 2 of Title I of the National Industrial Recovery Act (June 16, 1933—48 Stats. 195) provided, in part as follows:

> "(a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, * * * as he may find necessary, * * *"
>
> "(b) The President may delegate any of his functions and powers under this title to such * * * agents * * * as he may designate * * *"
>
> "(c) * * * any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act * * *."

Sec. 302 of the Agricultural Adjustment Act of 1938 (52 Stats. 31, 43) provides, in part, as follows:

> "(a) The Commodity Credit Corporation is authorized, upon recommendation of the Secretary and with the approval of the President, to

make available loans on agricultural commodities (including dairy products). Except as otherwise provided in this section, the amount, terms and conditions of such loans shall be fixed by the Secretary, subject to the approval of the Corporation and the President.

* * * * * * *

"(c) The Corporation is directed to make available to cooperators loans upon cotton during any marketing year * * *.

* * * * * * *

"(f) For the purposes of subsections * * *, (c) * * *, a cooperator shall be a producer on whose farm the acreage planted to the Commodity for the crop with respect to which the loan is made does not exceed the farm acreage allotment for the commodity under this title, * * *.

* * * * * * *

"(h) No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan under this section unless such loan was obtained through fraudulent representations by the producer.

* * * * * * *"

Public Act No. 442, 75th Congress (52 Stat. 107), March 8, 1938, provides, as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as of the 31st of March in each year and as soon as possible thereafter, beginning with March 31, 1938, an appraisal of all the assets and liabilities of the Commodity Credit Corporation for the purpose of determining the net worth of the Commodity

Credit Corporation shall be made by the Secretary of the Treasury. The value of assets shall, insofar as possible, be determined on the basis of market prices at the time of appraisal and a report of any such appraisal shall be submitted to the President as soon as possible after it has been made. In the event that any such appraisal shall establish that the net worth of the Commodity Credit Corporation is less than $100,000,000, the Secretary of the Treasury, on behalf of the United States, shall restore the amount of such capital impairment by a contribution to the Commodity Credit Corporation in the amount of such impairment. To enable the Secretary of the Treasury to make such payment to the Commodity Credit Corporation, there is hereby authorized to be appropriated annually, commencing with the fiscal year 1938, out of any money in the Treasury not otherwise appropriated, an amount equal to any capital impairment found to exist by virtue of any appraisal as provided herein.

Sec. 2. In the event that any appraisal pursuant to section 1 of this Act shall establish that the net worth of the Commodity Credit Corporation is in excess of $100,000,000, such excess shall, as soon as practicable after such appraisal, be deposited in the Treasury by the Commodity Credit Corporation and shall be credited to miscellaneous receipts. The Secretary of the Treasury is directed, as soon as practicable, to use any amounts so deposited to retire an equivalent amount of the public debt, which amount shall be in addition to any other amount required to be used for such purpose.

Sec. 3. The Secretary of Agriculture, the Governor of the Farm Credit Administration, and the Reconstruction Finance Corporation are hereby authorized and directed to transfer to the United States all right, title, and interest in and to the capital stock of the Commodity Credit Corporation which each of them now holds. All rights of the United States arising out of the ownership of such capital stock shall be exercised by the President, or by such officer, officers, agency, or agencies as he shall designate, and in such manner as he shall prescribe.

Sec. 4. With the approval of the Secretary of the Treasury, the Commodity Credit Corporation is authorized to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not exceeding $500,000,000. Such obligations shall be in such forms and denominations, shall have such maturities, shall bear such rates of interest, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices as may be prescribed by the Commodity Credit Corporation, with the approval of the Secretary of the Treasury. Such obligations shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such obligations shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Commodity Credit Corporation shall be unable to

pay upon demand, when due, the principal of, or interest on, such obligations, the Secretary of the Treasury shall pay to the holder the amount hereof which is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such obligations. The Secretary of the Treasury, in his discretion, is authorized to purchase any obligations of the Commodity Credit Corporation issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Commodity Credit Corporation's obligations hereunder. The Secretary of the Treasury may at any time sell any of the obligations of the Commodity Credit Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the obligations of the Commodity Credit Corporation shall be treated as public-debt transactions of the United States. No such obligations shall be issued in excess of the assets of the Commodity Credit Corporation, including the assets to be obtained from the proceeds of such obligations, but a failure to comply with this provision shall not invalidate the obligations or the guaranty of the same. The Commodity Credit Corporation shall have power to purchase such obligations in the open market at any time and at any price.

Sec. 5. Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation (except surtaxes, estate, inheritance, and gift taxes). The Commodity Credit Corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. (Approved, March 8, 1938.)"

EXHIBIT "B"

CERTIFICATE OF INCORPORATION OF COMMODITY CREDIT CORPORATION.

First: The name of this corporation is Commodity Credit Corporation.

Second: The principal office of this corporation in the State of Delaware is to be located at No. 100 West Tenth Street in the City of Wilmington, County of New Castle, and until otherwise designated by the Board of Directors its resident agent shall be The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

Third: The objects and purposes for which and for any of which this corporation is formed are, to do any or all of the things herein set forth to the same extent as natural persons might or could do, viz.:

(a) To do any and all things which may be necessary to accomplish the purposes of the following Acts of Congress of the United States of America, and any amendment or amendments heretofore or hereafter made thereto;

1. The Agricultural Adjustment Act, approved May 12, 1933.

2. The National Industrial Recovery Act, approved June 16, 1933.

3. The Federal Emergency Relief Act of 1933, approved May 12, 1933.

4. Reconstruction Finance Corporation Act, approved January 22, 1932.

5. The Federal Farm Loan Act, approved July 17, 1916.

6. The Farm Credit Act of 1933, approved June 16, 1933.

7. The Emergency Relief and Construction Act of 1932, approved July 21, 1932.

(b) To purchase, or otherwise acquire, to hold, or otherwise to deal in, to sell or otherwise dispose of any and all agricultural and/or other commodities, and/or products thereof and to loan and/or borrow money upon the same.

(c) To enter into and to encourage farmers, producers and others to enter into marketing plans and agreements and to cooperate in any plan which provides for reduction in the acreage or reduction in the production for market of agricultural commodities.

(d) To engage in any activity in connection with or involving the production, carrying, shipping, storing, exporting, warehousing, handling, preparing, manufacturing, processing and marketing of agricultural and/or other commodities and/or products thereof.

To borrow money and to draw, make, accept, endorse, warrant, guarantee, transfer, assign, execute and issue bonds, debentures, mortgages, promissory notes, bills of exchange, warrants and all kinds of obligations and non-negotiable, negotiable or transferable instruments without limit as to amount, and for the security of any of its obligations to convey, trans-

fer, assign, deliver, mortgage, and/or pledge all or any part of its property or assets upon such terms and conditions as the Board of Directors shall authorize:

(e) Without limiting the generality of the foregoing, to borrow money for the purpose of (1) purchasing, storing, handling, and/or processing agricultural and/or other commodities and/or products thereof or any surplus of the same and (2) disposing of or removing the same through orderly marketing in the United States and/or elsewhere.

(f) To loan money, to buy, discount, sell, rediscount or otherwise deal in notes, warehouse receipts, pledges, bills of lading, freight receipts, trust receipts, open accounts, mortgages and other similar evidences of debt, or to loan money and to take notes, warehouse receipts, pledges, bills of lading, freight receipts, trust receipts, open accounts, mortgages and other evidences of debt as collateral security therefor.

(g) To take and hold for any of its purposes, by bequest, devise, gift, purchase, lease or otherwise, either absolutely or in trust, any property, real or personal, in the District of Columbia, any of the States, territories, or Colonies of the United States and in foreign countries, without limitation as to amount or value; to own, operate, manage, lease, mortgage, pledge, sell, assign, and transfer or otherwise dispose of and exercise all privileges of ownership over such property and to invest and reinvest any principal, and deal with and expand its income and principal within or without the State of Delaware in

such manner as in the judgment of its directors will best promote its objects and purposes.

(h) To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this state or any other state, country, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(i) To enter into, make, perform and carry out contracts of every kind and description for any lawful purpose without limit as to amount, with any person, firm, association, corporation, municipality, county, state, body politic, territory or government or colony or dependency thereof.

(j) To sell, deal in, store, handle, process, transport, deliver and/or accept delivery of agricultural and/or other commodities and/or products thereof and/or to make contracts for the purchase or sale of the same, by itself or through subsidiaries or other agencies or to act as agent, broker, shipper, consignee, consignor, trustee or factor with respect thereto and as such agent, broker, shipper, consignee, consignor, trustee, or factor, to buy, sell, deal in, hypothecate, pledge, mortgage, store, handle, process, transport, manufacture, deliver or accept delivery of the aforesaid commodities and/or products thereof and/or to make contracts for the purchase or sale of the same

on behalf of the owner thereof and to fix and collect and deduct all charges for such services.

(k) To acquire by purchase, lease or construction, or in any other manner, storage and other physical facilities for the handling, carrying, processing, manufacturing, storing, preparing for market and marketing agricultural and/or other commodities, and/or products thereof.

(l) To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount, in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries.

(m) In general, to have and to exercise all the powers and privileges conferred by the General Corporation Laws of Delaware upon corporations, and to do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or for the attainment of any of the objects or for the furtherance of any of the powers herein set forth, either alone or in association with other corporations, firms, agencies or individuals, and to do every other act or thing lawfully incident or appurtenant to or growing out of or connected with any of the aforesaid objects, purposes and/or powers.

The objects and purposes specified in the foregoing clauses shall, except as otherwise expressed, be in no wise limited or restricted by reference to or inference from the terms of any other clause in this Certificate of Incorporation, but the objects and purposes speci-

fied in each of the foregoing clauses shall be regarded as independent objects and purposes.

The foregoing clauses shall be construed both as purposes and powers but no recitation, expression or declaration of specific or specified powers or purposes herein enumerated shall be deemed to be exclusive, and it is hereby expressly declared that this corporation shall have and exercise all powers conferred on it by law.

Fourth: The total number of shares of stock which this corporation shall have authority to issue is Thirty Thousand (30,000) and the par value of such shares is One Hundred Dollars ($100.00) amounting in the aggregate to Three Million Dollars ($3,000,000.00).

Fifth: The minimum amount of capital with which the corporation will commence business is One Thousand Dollars ($1,000).

Sixth: The names and places of residence of each of the original incorporators are as follows:

Name	Residence
Henry A. Wallace	Washington, D. C.
Henry Morgenthau, Jr.	Washington, D. C.
Oscar Johnston	Washington, D. C.

Seventh: This corporation is to have perpetual existence.

Eighth: The private property of the stockholders shall not be subject to the payment of corporate duties to any extent whatever.

Ninth: The business of this corporation shall be managed by its board of directors except as in this certificate of incorporation or in the by-laws otherwise provided. The number of directors of the corporation shall be as specified in the by-laws and such number may from time to time be increased or decreased in such manner as may be prescribed in the by-laws, provided the number of directors of the corporation shall not be less than three. Directors need not be officers or stockholders of this corporation. The election of Directors need not be by ballot unless the by-laws so provide. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make and alter the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

By resolution or resolutions, passed by a majority of the whole board to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in said resolution or resolutions or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation,

and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, the board of directors shall have power and authority to sell, lease, or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

The corporation may in its by-laws confer powers upon its board of directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

Tenth: Stockholders shall not have the preemptive right to subscribe to any new or additional issue of stock of this corporation or any part thereof.

Eleventh: Both stockholders and directors shall have power, if the by-laws so provide, to hold their

meetings, and to have one or more offices within or without the State of Delaware, and to keep the books of this corporation (subject to the provisions of the statutes), outside of the State of Delaware at such places as may be from time to time designated by the Board of Directors.

Twelfth: The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this sixteenth day of October, 1933.

In presence of	H. A. Wallace	(Seal)
Lee Pierson	Oscar Johnston	(Seal)
Robert Orr	H. Morgenthau, Jr.	(Seal)

District of Columbia.—ss.

Be it remembered, that on this 16th day of October, A. D. 1933, personally appeared before me, the Sub-

scriber, a Notary Public in and for the District of Columbia, Henry A. Wallace, Henry Morgenthau, Jr., and Oscar Johnston, being all of the parties to the foregoing Certificate of Incorporation, known to me personally to be such, and they acknowledged the said Certificate to be their act and deed and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

John P. Wenchel
Notary Public, D. C.

John P. Wenchel
Notary Public
District of Columbia

STATE OF DELAWARE
OFFICE OF SECRETARY OF STATE.

I, Josiah Marvel, Jr., Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Commodity Credit Corporation", as received and filed in this office the seventeenth day of October, A. D. 1933, at 11 o'clock A. M.

In testimony whereof, I have hereunto set my hand and official seal at Dover, this twenty-sixth day of December in the year of our Lord one thousand nine hundred and thirty-nine.

(Seal) Josiah Marvel Jr.
Secretary of State.

EXHIBIT "C"

COTTON PRODUCER'S NOTE.

On or before July 31, 1938, for value received, the undersigned promises to pay to the order of.....
....., payee, at the office of the Commodity Credit Corporation, Washington, D. C. ..... dollars, with interest from the date hereof at the rate of 4 per centum per annum payable at maturity. The makers and endorsers severally waive presentment for payment, demand, protest, notice of protest, and notice of nonpayment of this note.

This note is secured by a pledge of warehouse receipts representing.....bales of cotton aggregating.....pounds.

Witness:

.....

Name Address (Signature of Producer)

(Fill all blanks with ink, indelible, pencil, or typewriter in both note and advice of loan agreement. Only white copy marked original is to be executed; the colored copy marked duplicate is to be retained by the producer. No papers containing additions, erasures, or alterations will be accepted by Reconstruction Finance Corporation or Commodity Credit Corporation.)

Loan Agreement.

Print (Producer..... County.....) Print
or (Address..... R.F.D..... State.....) or
Type ( ) Type
to secure note of..... of $..... Payable
Date (Insert face amount)
to.....
(Name of payee)

1. The undersigned hereby sells, assigns, pledges, and/or hypothecates to said payee and any subsequent holder the following warehouse receipts for cotton as collateral security for the payment of the indebtedness as evidenced by the note referred to above in this loan agreement:

(Obtain information for schedule from warehouse receipts. If space insufficient, attach schedule firmly. Have producer and warehouseman identify same by signature. Note in space below that schedule is attached and fill in line marked: "Total" only.)

Schedule of Warehouse Receipts.

Warehouse Receipt Number	Number Bales	Weight Pounds	Loan Value per Pound	Amount
				$

Name of Warehouse.....
Address .....
All cotton securing this note must be in same warehouse.

Total	XXX	$

The undersigned producer represents and warrants that the cotton listed in the above or attached schedule

is of the grade and staple eligible for a loan of the amount per pound set forth in the above or attached schedule, determined in accordance with paragraph 3 of the printed Instructions (1937-38 C.C.C. Cotton Form 1), and agrees that any subsequent determination of the grade and staple of such cotton, made by or under the direction of the Bureau of Agricultural Economics, United States Department of Agriculture, shall be final, conclusive, and binding as to the true class of such cotton.

Warehouseman's Certificate and Waiver.

All charges on the cotton listed in the above or attached schedule are paid to August 1, 1937, or dates of warehouse receipts, whichever are later. This cotton is in existence, is undamaged, and is and will be kept under cover within a structure enclosed in such a manner that the cotton is adequately protected from weather damage. The warehouse receipts listed above or in the attached schedule state in their printed terms or are stamped "Insured". This cotton is insured against loss or damage by fire for the full market value and will be kept insured so long as the receipt is outstanding. Lien for all charges, including receiving, tagging, weighing, storing, sampling, turning out, and insurance, will not be claimed for more than 25 cents per bale for each full month and the proportionate part of 25 cents for each fractional part of a month, or the charges applicable under the warehouseman's established tariffs in existence at the date of the receipts, whichever is less. Commodity Credit Corporation may, by agents or otherwise, inspect the cotton,

the warehouse, and the records of the warehouse at any time. The warehouseman agrees that if the cotton is ordered shipped by Commodity Credit Corporation, for the purpose of reconcentration or otherwise, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts unless the cotton is shipped within a reasonable time, as determined by the Corporation. All cotton listed in the above or attached schedule is guaranteed to be of the grade and staple eligible for a loan of the amount per pound set forth in the above or attached schedule, determined in accordance with the provisions of paragraph 3 of the printed Instructions (1937-38 C.C.C. Cotton Form 1).

In consideration of the benefits accruing from the storage of said cotton, the undersigned warehouseman hereby agrees, in the event said cotton is subsequently determined by the Bureau of Agricultural Economics, United States Department of Agriculture, to be below the grade and style eligible for a loan of the amount per pound stated in the above or attached schedule, to reimburse Commodity Credit Corporation for any loss on account of said loan to the extent of the difference per pound between the value of the lowest grade eligible for the loan made, as set forth in the above or attached schedule, and the actual value of said cotton determined by said Bureau of Agricultural Economics.

Dated..... .....

.....
Signature of warehouseman

By.....
(Agent or officer—Title)

(Attention is called to paragraph (9) referring to the criminal section quoted at the end of this agreement. Warehouseman's certificate must be dated more than 5 days preceding date of above mentioned note.)

2. In consideration of the loan evidenced by the aforementioned note, the undersigned represents and warrants to and agrees with all holders of the note as follows:

That the cotton represented by warehouse receipts list herein or in the attached schedule was produced in 1937 by the undersigned as.....
(State whether landowner, landlord, or tenant. If as tenant, landlord must execute lien waiver below. Landlord cannot borrow on tenant's share nor on cotton taken in on account).

That he is the owner of such cotton, has the legal right to pledge same and that the beneficial title thereto is and always has been in the undersigned producer. (A misstatement or misrepresentation in regard to any of the foregoing renders the producer personally liable under this loan agreement, and subject to criminal prosecution under the provisions of Section 16 (a) of the Reconstruction Finance Corporation Act, as amended, printed at the end hereof).

List of Lienholders and Their Waiver and Consent Pledge.

The party making this loan agreement certifies and warrants that the cotton covered by this agree-

We certify that we are the herein-named holders of liens on the cotton covered by this agreement

ment is free and clear of any and all liens and encumbrances except in favor of the lienholders listed herein below. If no liens, insert "None".

and hereby authorize (1) the pledge of the same in accordance with this agreement and the above described note and any extension or renewal thereof, and (2) redelivery of warehouse receipts on payments of the loan, and (3) payment of any proceeds of this loan and of the proceeds of the sale of such cotton or insurance proceeds to the party making this loan agreement.

Names of Lienholders Including Federal Agencies and Landlords.	Signature of Lienholders or Agents as Provided in Section 10 of 1937-38 C.C.C. Cotton Form 1.
.....	.....
.....	.....
.....	.....

C.C.C. Cotton Form A

(Advice of Loan to be detached)

Advice of Loan

Lending agency must detach this slip and mail to Commodity Credit Corporation, Washington, D.C.

To: Commodity Credit Corporation
Washington, D. C.

.....
Date

We have this day made Cotton Producer's Loan as follows:

9 Cent Loans
No. Bales.....Amount

8 Cent Loans
No. Bales.....Amount

7¾ Cent Loans
No. Bales.....Amount

Total Loans
No. Bales.....Amount

.....
(Name of warehouse where cotton stored)

.....
(Lending Agency)

.....
(Address of warehouse City and State)

.....
(Address of lending agency—City and State)

3. Any holder may declare the note immediately due and payable upon the occurrence of any of the following events:

(a) When and so long as the price of middling ⅞ inch spot cotton on the New Orleans market, as determined by the Bureau of Agricultural Economics of the United States Department of Agriculture, shall be at or above 15 cents per pound.

(b) Upon discovery that the undersigned has made any misrepresentation herein or in connection with the loan evidence by said note.

(c) Upon any breach of warranty of the undersigned in this loan agreement contained or upon any failure on the part of the undersigned to comply with the agreements referred to in paragraph (8).

(d) Upon the filing by the undersigned of a petition in bankruptcy or for a composition or extension of debts under the Bankruptcy Act.

4. After July 31, 1938, or on the happening and continuance of any of the foregoing events, any holder is authorized to place all or any part of said cotton in any pool or pools with any other cotton held by the holder under generally similar loan agreements, and either by pool or separate contract, to sell, assign, transfer, and deliver the cotton or cotton documents, evidencing title thereto, at such time, in such manner, for cash or upon such terms and conditions, as such holder may determine, at any cotton exchange, or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and upon such sale, the holder may become the purchaser of the whole or any part of such collateral security.

5. After deducting all fees, cost, and expenses incident to insuring, carrying, handling, and marketing the collateral and accounting to the undersigned producer, including reasonable attorney fees, the holder shall apply the residue of any sales proceeds or insurance proceeds toward the payment of the above-mentioned note, returning the overplus, if any, only to the

undersigned, or his personal representatives, without right of assignment or substitution of any other party. The undersigned producer shall be and remain liable to the holder for any deficiency only in the event that he does not reduce cotton acreage or production in accordance with the provisions of paragraph 8 hereof, or has made any misrepresentation herein or in connection with the loan represented by the above-mentioned note, or in the event of a breach of warranty in this loan agreement contained.

6. The undersigned agrees that if any Federal agency or instrumentality shall become the holder of the above mentioned note, it may, before or after maturity, move the collateral cotton from one storage point to another and pay freight; may compress the commodity; may store separately, in block, or otherwise; may insure or reinsure against any risks, or otherwise handle or deal with the commodity, as may be deemed appropriate and proper subject to the terms of this loan agreement, releasing, substituting, and obtaining any and all instruments and documents, and paying or discharging any accrued or accruing charges or expenses as may in any way be appropriate or necessary therefor. Any costs and expenses connected with such handling without regard to insurance savings by reclassification or duration shall be a charge against the commodity, payable out of any proceeds thereof.

7. The undersigned further warrants for the benefit of any holder of the note, other than the payee, that he has no defenses to said note or set-offs or counterclaims against the payee; that none will be claimed

which may hereafter arise against any prior party and that in case of any judicial proceedings on said note by any such holder he hereby waives the right to any and all defenses, counterclaims, or setoffs against any or all prior parties.

8. Inasmuch as said note is eligible for discount or purchase by Commodity Credit Corporation, an agency of the United States, the undersigned agrees with and for the benefit of the United States to participate in any agricultural conservation program or any cotton production or marketing adjustment program offered to cotton producers with respect to the production or marketing of the 1938 cotton crop by the Secretary of Agriculture pursuant to the provisions of the solid Conservation and Domestic Allotment Act or legislation enacted pursuant to Senate Joint Resolution 207, Seventy-fifth Congress. Neither the payment of said note nor any action taken pursuant to this agreement shall discharge or terminate the obligations under the paragraph 8.

9. The undersigned, all lienholders and their agents by executing waiver and consent in paragraph (2) and all warehousemen by executing certificate and waiver in paragraph one (1) agree that they and each of them have full knowledge of the provisions of section 16(a) of the Reconstruction Finance Corporation Act as amended,* and have made the representations and

*Section 16(a) of the Reconstruction Finance Corporation Act provides:
"Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining money, property, or anything of value, under this act, shall be punished by a fine of not more than $5000, or by imprisonment for not more than 2 years, or both."

statements contained in this loan agreement, for the purpose of influencing the Reconstruction Finance Corporation, to acquire the above-mentioned note by purchase, discount, or rediscount, or as security for a loan to the payee or its assignees, or otherwise, or to extend or renew credit in reliance thereon.

10. Unless this note is made payable to the Commodity Credit Corporation the undersigned represents he received on the date the above-mentioned note is dated the full amount thereof, without deductions for interest, commissions, storage, insurance, or other charges, and hereby acknowledges that he has received a copy of this agreement and the above mentioned note.

Read, considered, and signed.

Witness:

.....

.....

(Address)

.....

(Signature of Producer)

By.....

(For Corporate of Agent's Signature)

EXHIBIT "D"

EXECUTIVE ORDER NO. 6340.

AUTHORIZING THE FORMATION OF A CORPORATION TO BE KNOWN AS THE COMMODITY CREDIT CORPORATION.

Whereas, the Congress of the United States has declared that an acute emergency exists by reason of widespread distress and unemployment, disorganization of industry, and the impairment of the agricultural assets supporting the national credit structure, all of which affects the national public interest and welfare, and

Whereas, in order to meet the said emergency and to provide the relief necessary to protect the general welfare of the people, the Congress of the United States has enacted the following acts:

1. The Agricultural Adjustment Act, approved May 12, 1933.

2. The National Industrial Recovery Act, approved June 16, 1933.

3. The Federal Emergency Relief Act of 1933, approved May 12, 1933.

4. Reconstruction Finance Corporation Act, approved January 22, 1932.

5. The Federal Farm Loan Act, approved July 17, 1916.

6. The Farm Credit Act of 1933, approved June 16, 1933.

7. The Emergency Relief and Construction Act of 1932, approved July 21, 1932.

And whereas, in order, effectively and efficiently, to carry out the provisions of said acts it is expedient and necessary that a corporation be organized with such powers and functions as may be necessary to accomplish the purposes of said acts.

Now, therefore, under and by virtue of the authority vested in me by the National Industrial Recovery Act of June 16, 1933, it is hereby ordered that an agency, to-wit: a corporation, under the laws of Delaware, be created, said corporation to be named the Commodity Credit Corporation.

The governing body of said corporation shall consist of a board of directors composed of eight members, and the following persons, who have been invited and have given their consent to serve, shall be elected by the incorporators as such directors:

Henry A. Wallace, Secretary of Agriculture;

George N. Peek, Administrator, Agricultural Adjustment Administration;

Oscar Johnston, Director of Finance, Agricultural Adjustment Administration;

Henry Morgenthau, Jr., Governor, Farm Credit Administration;

Herman Oliphant, General Counsel, Farm Credit Administration;

Lynn P. Talley, Assistant to the Directors of the Reconstruction Finance Corporation;

E. B. Schwulst, Special Assistant to the Directors of the Reconstruction Finance Corporation;

Stanley Reed, General Counsel of the Directors of the Reconstruction Finance Corporation.

The office and principal place of business of said corporation outside of the State of Delaware shall be in the city of Washington, and branch offices may be established in such places within the United States as the said board of directors shall select and determine by and with the consent of the Secretary of Agriculture and the Governor of the Farm Credit Administration.

The capital stock of such corporation shall consist of 30,000 shares of the par value of $100 each.

The Secretary of Agriculture and the Governor of the Farm Credit Administration are hereby authorized and directed to cause said corporation to be formed, with such articles or certificate of incorporation, and by-laws, which they shall deem requisite and necessary to define the methods by which said corporation shall conduct its business.

The Secretary of Agriculture and the Governor of the Farm Credit Administration are authorized and directed to subscribe for all of said capital stock for the use and benefit of the United States. There is hereby set aside for the purpose of subscribing to the capital stock in said corporation the sum of $3,000,000 out of the appropriation of the sum of $100,000,000 authorized by Section 220 of the National Industrial Recovery Act and made by the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933. (Public No. 77, 73d Congress.)

It is hereby further ordered that any outstanding stock standing in the name of the United States shall be voted by the Secretary of Agriculture and the Governor of the Farm Credit Administration jointly, or by such person or persons as the said Secretary of Agriculture and the Governor of the Farm Credit Administration shall appoint as their joint agent or agents for that purpose. The Board of Directors (other than the initial board of directors elected by the incorporators) shall be elected and any vacancies thereon shall be filled by the Secretary of Agriculture and the Governor of the Farm Credit Administration jointly, subject to the approval of the President of the United States.

Franklin D. Roosevelt.

The White House
October 16, 1933.

EXHIBIT "E"

(PUBLIC NO. 1—74th CONGRESS.)
AN ACT.

To extend the functions of the Reconstruction Finance Corporation for two years, and for other purposes.

* * * * * * *

Sec. 7. Notwithstanding any other provisions of law, Commodity Credit Corporation, a corporation organized under the laws of the State of Delaware as an agency of the United States pursuant to the Executive Order of the President of October 16, 1933, shall continue, until April 1, 1937, or such earlier date as may be fixed by the President by Executive Order to be an agency of the United States. During the continuance of such agency, the Secretary of Agriculture and the Governor of the Farm Credit Administration are authorized and directed to continue, for the use and benefit of the United States, the present investment in the capital stock of Commodity Credit Corporation, and the corporation is hereby authorized to use all its assets, including capital and net earnings therefrom, and all moneys which have been or may hereafter be allocated to or borrowed by it, in the exercise of its functions as such agency, including the making of loans on agricultural commodities. (49 Stat. 4.)

EXHIBIT "F"

(PUBLIC NO. 2—75TH CONGRESS.)
AN ACT.

To continue the functions of the Reconstruction Finance Corporation, and for other purposes.

* * * * * * *

Sec. 2(a). Section 7 of the Act approved January 31, 1935 (Public, Numbered 1, Seventy-fourth Congress), is hereby amended by striking from the first sentence thereof "April 1, 1937" and inserting in lieu thereof "the close of business on June 30, 1939"; Section 1 of the Act approved March 31, 1936 (Public, Numbered 484, Seventy-fourth Congress), is hereby amended by striking from the first sentence thereof "February 1, 1937" and inserting in lieu thereof "the close of business on June 30, 1939"; Section 9 of the Act approved January 31, 1935 (Public, Numbered 1, Seventy-fourth Congress), is hereby amended by striking from the first sentence thereof "June 16, 1937" and inserting in lieu thereof "the close of business on June 30, 1939". (50 Stat. 5.)

EXHIBIT "G"

(PUBLIC NO. 3—76TH CONGRESS.)
(H.R. 4011.)

An Act to continue the functions of the Commodity Credit Corporation and the Export-Import Bank of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) Section 7 of the Act approved January 31, 1935 (49 Stat. 4), as amended, is hereby further amended by striking from the first sentence thereof "June 30, 1939" and inserting in lieu thereof "June 30, 1941; (b) Section 9 of the Act approved January 31, 1935 (49 Stat. 4.), as amended, is hereby further amended by inserting before the period at the end of the last sentence thereof a colon and the following: "Provided further, That the Export-Import Bank of Washington shall not have outstanding at any one time loans or other obligations to it in excess of $100,000,000, the capital for which the Reconstruction Finance Corporation, when requested by the Secretary of the Treasury with the approval of the President, may continue to supply from time to time through loans or by subscription to preferred stock"; and (d) Section 4 of the Act approved March 8, 1938 (52 Stat. 108) is hereby amended by striking from the first sentence thereof "$500,000,000" and inserting in lieu thereof "$900,000,000". Approved March 4, 1939.

Office - Supreme Court, U. S.
FILED
AUG 15 1940
CHARLES ELMORE CROPLEY

TRANSCRIPT OF RECORD

Supreme Court of the United States

October Term, 1940

No. 341

COUNTY OF FRESNO, and WALTER S. HENDERSON, Jr., Assessor of the County of Fresno, State of California,

Petitioners,

vs.

COMMODITY CREDIT CORPORATION,

Respondent.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

No. 9204

United States

Circuit Court of Appeals

For the Ninth Circuit.

COUNTY OF FRESNO, and G. P. CUMMINGS, Assessor of the County of Fresno, State of California,

Appellant,

vs.

COMMODITY CREDIT CORPORATION,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

DAN F. CONWAY,
District Attorney, County of Fresno,
W. C. TUPPER,
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Court House, Fresno, California.
EARL WARREN,
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Deputy Attorney General, State of California,
State Building, San Francisco, California.

For Appellees:

JOHN D. GOODLOE, Esq.,
Commodity Credit Corporation,
Washington, D. C.
TREADWELL & LAUGHLIN, Esqs.,
REGINALD S. LAUGHLIN, Esq.,
Standard Oil Building,
San Francisco, California. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States, in and for the Southern District of California, Northern Division.

Eq. No. E-26

COMMODITY CREDIT CORPORATION,
Plaintiff,

vs.

COUNTY OF FRESNO and G. P. CUMMINGS, Assessor of the County of Fresno, State of California,
Defendants.

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled action as follows:

1. The plaintiff herein is hereby granted leave to file an amended bill of complaint.

2. The defendants hereby withdraw their motion to dismiss the original complaint and shall forthwith file a motion to dismiss the amended bill of complaint. [30]

3. The defendants agree that no sale shall be made of any of the property as to which the plaintiff claims immunity from taxation until final determination of this cause. In case the said cause is not finally determined before the time fixed by statute for the seizure and sale regarding taxes levied and assessed in 1939 upon like property as to which plaintiff claims exemption from taxation, said defendants agree that after notice of sale is *give* the

actual sale will be postponed until the final determination of this action. In view of this agreement the temporary injunction heretofore granted may be dissolved.

4. If said case is finally decided against the plaintiff, either in whole or in part, plaintiff agrees to forthwith furnish to defendants a full and detailed statement as to the exact properties which are within the class or classes held not to be exempt from taxation.

5. In view of the equities in the instant proceedings the parties agree that the Court may provide that no interest or other penalties shall be collected from plaintiff for nonpayment of any of said taxes included in the pending cause and for subsequent years pending final determination of this action, and defendants will not object to such provision.

Dated: October 25th, 1938.

JOHN D. GOODLOE
REGINALD S. LAUGHLIN
Attorneys for Plaintiff
DAN F. CONWAY
District Attorney of County of Fresno
W. C. TUPPER
Assistant District Attorney of County of Fresno
Attorneys for County of Fresno and G. P. Cummings, Assessor of County of Fresno, State of California. [31]

U. S. WEBB
Attorney General of the State of California
By JAMES J. ARDITTO
Deputy Attorney General of the State of California
JAMES J. ARDITTO
Deputy Attorney General of the State of California
Of Counsel for County of Fresno and G. P. Cummings, Assessor of County of Fresno, State of California.

It is so ordered:
Oct. 25, 1938.

GEO. COSGRAVE,
District Judge

[Endorsed]: Filed Oct. 25, 1938. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy. [32]

[Title of District Court and Cause.]

AMENDED BILL OF COMPLAINT

Commodity Credit Corporation, by leave of court first had and obtained, files this, its Amended Bill of Complaint against the defendants above named, and alleges:

I.

That Commodity Credit Corporation is and was at all times herein mentioned an instrumentality

and agency of the United States engaged in the exercise of governmental functions, and is and was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of Delaware, with all of its issued and outstanding stock owned by the United [33] States and with its affairs managed by federal government officials selected by the United States as owner of such stock; that said corporation was so organized on October 17, 1933, pursuant to Executive Order of the President of the United States, No. 6340, dated October 16, 1933; that its organization was ratified and its life as a governmental instrumentality and agency was extended to April 1, 1937, by Section 7 of the Act of January 31, 1935 (Public No. 1, 74th Congress); that by Section 2 of the Act of January 26, 1937 (Public No. 2, 75th Congress) its life as a governmental instrumentality and agency was again extended to June 30, 1939, or such earlier date as may be determined by the President; that the original capital of said corporation was $3,000,000. and the funds therefor were made available by Executive Order of the President of the United States, No. 6340, dated October 16, 1933, out of the appropriation of $3,300,000,000. authorized by Section 220 of the National Industrial Recovery Act, $100,000,000. of which the President was authorized to allocate for expenditures in carrying out, among others, the purposes of the Agricultural Adjustment Act, and said appropriation

was carried in the Fourth Deficiency Act from the fiscal year 1933; that its said capital was increased by $97,000,000. pursuant to the Act of Congress of April 10, 1936 (Public No. 489, 74th Congress) which authorized and directed the stockholders of the corporation to increase the authorized capital of said corporation by $97,000,000. and directed the Reconstruction Finance Corporation to acquire that amount of non-assessable capital stock of said corporation; that by Act of Congress approved March 8, 1938 (Public No. 442, 75th Congress) provision was made that as of the 31st day of March in each year and as soon as possible thereafter, beginning with March 31, 1938, an appraisal of all the [34] assets and liabilities of said Commodity Credit Corporation for the purpose of determining the net worth of said Commodity Credit Corporation shall be made by the Secretary of the Treasury, and the value of the assets shall, insofar as possible, be determined on the basis of market prices at the time of appraisal and a report of any such appraisal shall be submitted to the President as soon as possible after it has been made, and in the event any such appraisal shall estabish that the net worth of said Commodity Credit Corporation is less than $100,000,000, the Secretary of the Treasury, on behalf of the United States, shall restore the amount of such capital impairment by a contribution to said Commodity Credit Corporation in the amount of such impairment, and to enable the Secretary of

the Treasury to make such payment to said Commodity Credit Corporation, there is authorized to be appropriated annually, commencing with the fiscal year 1938, out of any money in the Treasury not otherwise appropriated, an amount equal to any capital impairment found to exist by virtue of any such appraisal, and in the event that any such appraisal shall establish that the net worth of said Commodity Credit Corporation is in excess of $100,000,000. such excess shall, as soon as practicable after such appraisal, be deposited in the treasury of said Commodity Credit Corporation and shall be credited to miscellaneous receipts, and the Secretary of the Treasury is directed, as soon as practicable, to use any amount so deposited to retire an equivalent amount of the public debt, which amount shall be in addition to any other amount required to be used for such purpose, and the Secretary of Agriculture, the Governor of the Farm Credit Administration, and the Reconstruction Finance Corporation are authorized and directed to transfer to the United States all right, title and interest in and to the capital stock of said Commodity Credit Corporation which each of them then *hold,* [35] and all rights of the United States arising out of the ownership of such capital stock shall be exercised by the President, or by such officer, officers, agency or agencies as he shall designate, and in such manner as he shall prescribe, and with the approval of the Secretary of the Treasury, said Commodity Credit

Corporation is authorized to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not exceeding $500,000,000., and such obligations shall be in such forms and denominations, shall have such maturities, shall bear such rate of interest, shall be subject to such terms and conditions, and shall be in such manner and sold at such prices as may be prescribed by said Commodity Credit Corporation, with the approval of the Secretary of the Treasury, and such obligations shall be fully and unconditionally guaranteed both as to principal and interest by the United States, and such guarantees shall be expressed on the face thereof, and such obligations shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof, and in the event that said Commodity Credit Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such obligations, the Secretary of the Treasury shall pay to the holder the amount thereof so authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all rights of the holders of such obligations of said Commodity Credit Corporation so issued, and for such purpose the Secre-

tary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any [36] securities thereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of said Commodity Credit Corporation's obligations thereunder, and the Secretary of the Treasury may at any time sell any of the obligations of said Commodity Credit Corporation so acquired by him, and all redemptions, purchases and sales by the Secretary of the Treasury of the obligations of said Commodity Credit Corporation shall be treated as public-debt transactions of the United States, and no such obligations shall be issued in excess of the assets of said Commodity Credit Corporation, including the assets to be obtained from the proceeds of such obligations, but a failure to comply with such provision shall not invalidate the obligations or the guaranty of the same, and the Commodity Credit Corporation shall have power to purchase such obligations in the open market at any time and at any price, and bonds, notes, debentures and other similar obligations so issued for said Commodity Credit Corporation shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation (except surtaxes, estate, inheritance and gift taxes); that the

President of the United States by Executive Order No. 7848, dated March 22, 1938, acting by virtue of and pursuant to the authority vested in him by the Act of Congress of February 24, 1938 (Public No. 432, 75th Congress) and said Act of Congress of March 8, 1938 (Public No. 442, 75th Congress) duly designated the Secretary of the Treasury on behalf of the United States to receive from the Reconstruction Finance Corporation all of said capital stock as the Reconstruction Finance Corporation may hold pursuant to any provision of law referred to in subsection (b) of Section I of said Act of February 24, 1938, [37] and to receive from the Secretary of Agriculture and the Governor of the Farm Credit Administration such stock of said Commodity Credit Corporation as they held on March 22, 1938, and the Secretary of the Treasury was thereby authorized and directed to exercise on behalf of the United States any and all rights accruing to the holder of such stock; that thereafter, pursuant to said Executive Order No. 7848 and said Acts of Congress therein referred to, all of the capital stock of said Commodity Credit Corporation was so transferred to the Secretary of the Treasury, and since that time all of said stock has been, and the same now is, so held by the Secretary of the Treasury.

II.

That included in the purposes for which said Commodity Credit Corporation was so organized

and exists is the lending upon commodities produced in the United States, agricultural and otherwise, so as to enable producers thereof to finance the carrying and orderly marketing of such commodities, to assist in the orderly marketing of such commodities for domestic consumption and for export, to assist in the regulation of interstate and foreign commerce in such commodities to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, to assist farmers in obtaining, insofar as practicable, parity prices for such commodities and parity of income, to assist consumers in obtaining an adequate and steady supply of such commodities at fair prices, and to assist in the conservation of national resources and in the preservation, maintenance and rebuilding of farm and ranch resources in the national public interest; that under its charter and by-laws said corporation is and was at all times herein mentioned authorized and empowered to deal in such commodities, agricultural and otherwise, as may from time to time [38] be designated by the President of the United States; that the President of the United States has designated cotton as such commodity.

III.

That pursuant to its public purposes and governmental functions and powers and authority so

vested in it, and as the means for carrying out such purposes and functions, said Commodity Credit Corporation heretofore has advanced large sums of money to producers of cotton, secured by cotton deposited in various warehouses and by warehouse receipts covering such cotton which have been delivered to and are held by said corporation; that under the loan agreements pursuant to which said money was so advanced said cotton is pledged to said corporation as security for said advances and for all fees, costs and expenses incident to insuring, carrying, handling and marketing said collateral, including reasonable attorney fees, and said corporation has possession and the right to possession of said cotton, and in the event of sales of said cotton by said corporation because of non-payment of said advances when due, or because of the happenings of any other contingencies giving said corporation the right to sell said cotton, the respective borrowers who have complied with the terms of said loan agreement have no personal liability for any deficiencies resulting from said sales, the liability of said respective borrowers in such event being limited to said callateral so pledged.

IV.

That prior to 12 o'clock meridian Monday, of March 7, 1938, said Commodity Credit Corporation had in its possession, through the negotiation to it of warehouse receipts, and on deposit in a certain

warehouse belonging to Valley Compress Company, at Pinedale, Fresno County, California, a large quantity of cotton [39] on which said Commodity Credit Corporation had so advanced large sums of money to the producers thereof, and of which it had such possession and right to possession, and in and to which it held such rights, liens and interests, and certain of said cotton has continuously since said date remained on deposit in said warehouse and in such possession of said Commodity Credit Corporation, and it has continued to hold and how holds said warehouse receipts and said rights, liens and interests, and said cotton now is so deposited in said warehouse and is in the possession of said Commodity Credit Corporation by virtue of said warehouse receipts. That on the 7th day of March, 1938, 12 o'clock meridian, and between such time and the 21st day of June, 1938, and after such June 21, 1938, the Commodity Credit Corporation received and had in its possession, through the negotiation to it of warehouse receipts, and on deposit in said warehouse a large quantity of cotton on which said Commodity Credit Corporation had, at such times, advanced large sums of money to the producers thereof and on which it held warehouse receipts and of which it had such possession and right of possession and in and to which it held such rights, liens and interests, and certain of said cotton has continuously since said times remained on deposit in said warehouse and in such posses-

sion of said Commodity Credit Corporation, and it has continued to hold and now holds said warehouse receipts and said rights, liens and interests, and said cotton is now so deposited in said warehouse and is in possession of said Commodity Credit Corporation by virtue of said warehouse receipts.

V.

That on said 7th day of March, 1938, and continuously thereafter, defendant G. P. Cummings was, and he now is, County Assessor of the County of Fresno, State of California, and at all [40] times herein mentioined defendant County of Fresno was, and it now is, a political subdivision of the State of California; that defendant G. P. Cummings, as said Assessor, purporting to act under and pursuant to the statutes of the State of California, has, from time to time between March 7, 1938, and June 21, 1938, levied assessments upon all of the cotton that was so deposited in said warehouse belonging to said Valley Compress Company, including all of said cotton then so deposited by said Commodity Credit Corporation and covered by said warehouse receipts so held by said Commodity Credit Corporation; that said cotton was so assessed at the full assessable value thereof without any deductions or allowances whatsoever being made by reason of the rights, liens and interests of said Commodity Credit Corporation therein, and without any consideration whatsoever being given to said rights,

liens and interests; that on the 21st day of June, 1938, said defendant, as said Assessor, purporting to act under and pursuant to the statutes of the State of California, seized and gave notice that he had on that day seized possession of 20,990 bales of cotton in said warehouse of said Valley Compress Company and that he would sell the same, or so much thereof as may be necessary, to satisfy the taxes so levied and assessed against said 20,990 bales of cotton, together with the cost of seizure and other costs, at public auction, on Wednesday, June 29, 1938, at the hour of 10 o'clock a. m., of said day at the warehouse of said Valley Compress Company at Pinedale, Fresno County, California; that said 20,990 bales of cotton which said Assessor claims to have so assessed and seized and which is so noticed for sale, includes the cotton referred to and described in paragraph IV hereof; and that in the case of cotton on which the Commodity Credit Corporation had made such advances to producers between the 7th day of March, 1938, and the 21st day of June, 1938, the ad- [41] vances were in some instances made before the levy of assessment and in some instances after such levy of assessment. That on said 7th day of March, 1938, and at all times thereafter, the market value of said cotton, so included in said 20,990 bales and on which said Commodity Credit Corporation made said advances, was, and the same now is, substantially equal to or less than the amounts so advanced thereon, and at

all of said times the interest of the Commodity Credit Corporation in and to said cotton was and now is public property of the United States so held by said Commodity Credit Corporation as said instrumentality and agency of the United States; that said rights, liens and interests of plaintiff in and to said property are exempt from taxation by the State of California, and by every political subdivision thereof, under the Constitution and laws of the United States, and also under section I of Article XIII of the Constitution of the State of California, and also under section 3607 of the Political Code of the State of California.

VI.

That notwithstanding the premises defendant G. P. Cummings threatens to offer said 20,990 bales of cotton for sale as in said notice specified, entirely irrespective of said rights, liens and interests of plaintiff herein and without in any way reserving or protecting said rights, liens or interests, and will then and there sell said cotton to any bidder whose bid shall be at least equal to the purported tax assessed thereon, together with costs of seizure and sale, unless some better bid is obtained therefor, entirely irrespective of the fact that the value of said cotton is far in excess of such bid and entirely irrespective of the fact that said purchaser may be without financial responsibility to respond for the damages and loss that will result to plaintiff by

reason of said sale, and defendant G. P. [42] Cummings threatens to and will thereupon undertake to convey said cotton to said purchaser and to vest title thereto in said purchaser, and threatens to and will thereupon take possession of said cotton so seized and sold and deliver the same to said purchaser, and said purchaser will undertake to dispose of and sell and deliver said cotton to others; that under the laws of the State of California under and pursuant to which said sale has been noticed and will be held, the owners of said property are given and accorded no rights of redemption whatsoever; that as a result of the aforesaid facts and circumstances plaintiff will be deprived of its possession and of its lien and its rights and remedies to realize, recover and collect its advances secured by said cotton will be lost or impaired.

VII.

That defendant G. P. Cummings is a resident and citizen of the County of Fresno, State of California, and of the Southern District of California, Central Division, and the said County of Fresno is situated within the Southern District of California, Central Division thereof.

VIII.

That this suit arises under the Constitution and laws of the United States and involves rights, privileges and immunities owned and claimed by the

plaintiff under the Constitution and laws of the United States and denied and disputed by the defendants.

IX.

That the matter in controversy herein, exclusive of interest and costs, amounts to more than $3,000, and in that regard plaintiff alleges that the amount of said tax and the value of the said property and the value of the interest of the plaintiff therein each exceeds the sum of $3,000. [43]

X.

That this suit is brought under and pursuant to the Federal Declaratory Judgment Act (Judicial Code, section 274d, 28 U.S.C.A., section 400); that an actual controversy exists between plaintiff and defendants herein in that plaintiff contends that it has acquired rights, interests and liens in and to the cotton on which it has made advances and has acquired and holds warehouse receipts as aforesaid, and that said rights, interests and liens so acquired and held by plaintiff constitute property that is exempt from taxation by the State of California and all political subdivisions of said state, and that no valid or legal assessment can be made of said cotton, and no valid or legal actions or proceedings can be had or taken respecting the seizure and sale thereof for non-payment of taxes, unless said assessments and said actions and proceedings are expressly made subject to all said rights, interests

and liens of plaintiff in and to said cotton, and unless any tax sales of said cotton are by express terms made subject to all said rights, interest and liens of plaintiff; on the other hand, defendants contend that said cotton is subject to assessment and taxation by the State of California and its political subdivisions, and is subject to seizure and sale in the event of non-payment of taxes, without said assessments, seizures or sales being made subject to said rights, interests and liens of plaintiff.

Wherefore, plaintiff prays:

1. That this Court adjudge, decree and declare the legal rights of the parties hereto, respecting the assessment of taxes by defendants on the cotton on which plaintiff has made advances and holds warehouse receipts as aforesaid, and respect- [44] ing the seizure and sale of said cotton in the event of the nonpayment of such taxes, and that this Court adjudge and decree that all such assessments, seizures and sales are illegal and void unless the same are expressly made subject to the rights, interests and liens of plaintiff in and to said cotton.

2. That plaintiff have such other and further relief as may seem meet and just.

JOHN D. GOODLOE,
REGINALD S. LAUGHLIN,
Attorneys for Plaintiff. [45]

State of California,
City and County of San Francisco—ss.

Reginald S. Laughlin, being first duly sworn, deposes and says:

I am one of the attorneys for plaintiff in this action; that I have read the foregoing Complaint, and know the contents thereof, and the same is true of my own knowledge, except as to matters stated therein on information and belief, and as to those matters I believe it to be true; that the reason why this verification is not made by an officer of plaintiff corporation is that none of its officers are now within the State of California where I reside.

REGINALD S. LAUGHLIN.

Subscribed and sworn to before me this 24th day of October, 1938.

[Seal] LULU P. LOVELAND,
Notary Public in and for the City and County of San Francisco, State of California.

Received a copy of the foregoing this 25th day of Oct., 1938.

DAN F. CONWAY,
W. C. TUPPER,
Attorneys for defendant.

[Endorsed]: Filed Oct. 25, 1938, at ..... min. past ..... o'clock .....m. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy. [46]

[Title of District Court and Cause.]

MOTION TO DISMISS AMENDED BILL OF COMPLAINT.

Come now the defendants above named and file herein a motion to dismiss the amended bill of complaint in the above entitled matter upon the following grounds, to-wit: [47]

I.

That said amended bill of complaint does not state facts sufficient to constitute a cause of action against these defendants.

DAN F. CONWAY,
District Attorney, County of Fresno.
W. C. TUPPER,
Assistant District Attorney, County of Fresno.
Attorneys for Defendants.

Received a copy of the foregoing this 25th day of Oct., 1938.

JOHN D. GOODLOE,
REGINALD S. LAUGHLIN,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 25, 1938, at ..... min. past ..... o'clock .....m. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy. [48]

[Title of District Court and Cause.]

MEMORANDUM OF ORDER.

The defendants' motion to dismiss plaintiff's amended complaint is denied on the authority of City of New Brunswick vs. United States, 276 U.S. 547, and Webster vs. Board of Regents, 163 Cal. 705, for the reason that the lien interest of the Commodity Credit Corporation, an agency wholly owned by the United States, may not be burdened through taxation by the state or its subdivisions.

Such being the view of the Court, plaintiff is entitled to judgment for declaratory relief, petitioned for in its amended complaint, and it will propose a decree accordingly.

January 11, 1939.

[Endorsed]: Filed Jan. 12, 1939. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk. [50]

In the District Court of the United States, Southern District of California, Northern Division.

Equity No. E-26.

COMMODITY CREDIT CORPORATION,
Plaintiff,

vs.

COUNTY OF FRESNO and G. P. CUMMINGS, Assessor of the County of Fresno, State of California,
Defendants.

JUDGMENT

On the 25th day of October, 1938, plaintiff, by its attorneys, John D. Goodloe, Esq., and Reginald S. Laughlin, Esq., with leave of defendants and this court, duly filed its amended bill of complaint herein, and thereafter on said day defendants, by their attorneys, Dan F. Conway, Esq., District Attorney, County of Fresno, and W. C. Tupper, Esq., Assistant District Attorney, County of Fresno, duly filed a motion to dismiss said amended bill of complaint, and thereafter on said day said motion to dismiss said amended bill of complaint came on regulary for hearing before the above entitled court, Honorable George Cosgrave, District Judge, presiding, Edward F. Treadwell, Esq., and Hans A. Klagsbrunn, Esq., appearing for plaintiff, and said W. C. Tupper, Esq., and James J. Arditto,

Esq., Deputy Attorney General, appearing for defendants, and said motion having been orally argued and thereafter written memoranda of points and authorities having been filed herein by the respective parties, and said motion having been duly submitted to the court, and the court being fully advised in the premises and having denied said motion to dismiss said amended bill of complaint, and the defendants not desiring to further answer or plead, It Hereby Is Adjudged and Decreed: [51]

1. That plaintiff is an arm and instrumentality of the United States, wholly owned by the United States and engaged exclusively in exercising governmental functions of the United States.

2. That plaintiff, as such arm and instrumentality and in the exercise of such functions, has acquired and holds rights, liens and interests in and to the cotton referred to in the complaint herein on which plaintiff has made advances and obtained and holds warehouse receipts as set forth in said complaint, and said rights, liens and interests are immune from taxation by the State and all political subdivisions thereof.

3. That said rights of plaintiff in and to said cotton include the right to the possession thereof.

4. That defendants can make no valid or legal assessments against plaintiff's rights, liens and interests in and to said cotton, and can make no valid or legal seizures or sales of said cotton in the event of the non-payment of any taxes assessed or

levied against said cotton or any interest therein, unless all said rights, liens and interests of plaintiff in and to said cotton are expressly excluded therefrom, and unless such seizures and sales are made, by express terms, subject to such rights, liens and interests including the right of possession thereto.

5. That plaintiff is entitled to recover its costs of suit from defendants, taxed at the sum of $38.30.

Done in open court this 3d day of March, 1939.

GEO. COSGRAVE,

District Judge.

Judgment entered March 4, 1939. Docketed March 4, 1939—"C". Book CO 1, Page 25.

R. S. ZIMMERMAN,

Clerk.

By FRANCIS E. CROSS,

Deputy.

[Endorsed]: Filed Mar. 4, 1939. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy Clerk. [52]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEAL IN AND FOR THE NINTH CIRCUIT.

Notice Is Hereby Given that the County of Fresno, and G. P. Cummings, Assessor of the County of Fresno, State of [53] California, defendants above named, hereby appeal to the Circuit

Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on March 4, 1939.

Dated: May 4th, 1939.

DAN F. CONWAY,
District Attorney, County of Fresno.
W. C. TUPPER,
Assistant District Attorney, County of Fresno.
Attorneys for Appellant.
Address: Court House,
Fresno, California.
EARL WARREN,
Attorney General, State of California.
JAMES J. ARDITTO,
Deputy Attorney General,
As of Counsel.

[Endorsed]: Filed May 5, 1939. Copies mailed to Attorneys for Plf. 5/5/39. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk. [54]

[Title of District Court and Cause.]

COST BOND

Know All Men by These Presents:

That we, County of Fresno, California, and G. P. Cummings, County Assessor of Fresno County, California, as Principals, and Hartford Accident

& Indemnity Company, a body corporate, duly incorporated under the laws of the State of Connecticut, and authorized to act as Surety under the Act of Congress, Approved August 13, 1894, as amended by the Act of Congress Approved March 23, 1910, whose principal office is located in the City of Hartford, As Surety, are held and firmly bound unto the above named Plaintiff in the sum of Two Hundred Fifty and 00/100 ($250.00) Dollars: to which payment well and truly to be made we bind ourselves, jointly and severally, our heirs, administrators, executors, successors and assigns, firmly by these presents. Sealed with our seals and dated this 2nd day of June, 1939.

Whereas, the Defendants, County of Fresno and G. P. Cummings, County Assessor of Fresno County, have prosecuted their appeal to The United States Circuit Court of Appeals For The Ninth Circuit to reverse the decree entered in said cause, by the United States District Court For The Southern District of California, Northern [57] Division, on the 4th day of March, 1939, against said Defendants.

Now, Therefore, the condition of the above obligation is such that if the named Defendants shall prosecute their appeal to effect and answer all costs, not to exceed the sum of Two Hundred Fifty and 00/100 ($250.00) Dollars, if they fail to make good their plea, or the appeal is dismissed or the decree affirmed or such costs as the Appellate Court may award if the judgment is modified, then this obliga-

tion is to be null and void, otherwise to remain in full force and effect.

COUNTY OF FRESNO,
CALIFORNIA,
By W. A. COLLINS,
Chairman of Board of Supervisors.
G. P. CUMMINGS,
HARTFORD ACCIDENT &
INDEMNITY CO.,
By B. F. GATES,
Attorney-in-Fact.
DAN F. CONWAY,
District Attorney, County of Fresno.
W. C. TUPPER,
Assistant District Attorney, County of Fresno.
Attorneys for Appellants.

State of California,
County of Fresno—ss.

On this 2nd day of June in the year one thousand nine hundred and 39 before me, Barbara Warren, a Notary Public in and for said County of Fresno, residing therein, duly commissioned and sworn, personally appeared B. F. Gates known to me to be the Attorney In Fact of the Hartford Accident and Indemnity Company, the Corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, and he

acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office, in the said County of Fresno the day and year in this certificate first above written.

[Seal] BARBARA WARREN,
Notary Public in and for the County of Fresno, State of California. My Commission will expire Feb. 6, 1941.

[Endorsed]: Filed Jun. 3, 1939. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk. [58]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing 58 pages, numbered from 1 to 58, inclusive, contain full, true and correct copy of the Complaint; Temporary Restraining Order and Notice of Hearing of Application for Temporary Injunction; Motion to Dismiss Complaint; Minute Order of July 18, 1938; Stipulation and Order continuing Restraining Order in effect; Stipulation and Order continuing Restraining Order in effect; Stipulation and Order for filing Amended Complaint; Amended Bill of Complaint; Motion to Dismiss Amended Bill of

Complaint; Minute Order of October 25, 1938; Memorandum of Order for Judgment; Judgment; Notice of Appeal; Cost Bond on Appeal, and Designation of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to $10.05, and that said amount has been paid me by the Appellants herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 10th day of June, A. D. 1939.

[Seal] R. S. ZIMMERMAN,
Clerk.

By EDMUND L. SMITH,
Deputy Clerk. [59]

[Endorsed]: No. 9204. United States Circuit Court of Appeals for the Ninth Circuit. County of Fresno, and G. P. Cummings, Assessor of the County of Fresno, State of California, Appellants, vs. Commodity Credit Corporation, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

Filed June 12, 1939.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals in and for the Ninth Circuit.

No. 9204

COUNTY OF FRESNO, et al.,

Appellants,

vs.

COMMODITY CREDIT CORPORATION,

Appellee.

DESIGNATION OF PARTS OF THE RECORD FOR CONSIDERATION OF APPELLANTS' POINTS TO BE RELIED UPON ON APPEAL.

Come now the appellants above named and hereby designate for consideration of their points to be relied upon on appeal the same parts of the record as designated for printing.

Dated: June 19th, 1939.

DAN F. CONWAY,
District Attorney, County of Fresno.
W. C. TUPPER,
Assistant District Attorney, County of Fresno.
Attorneys for Appellants.
EARL WARREN,
Attorney General of the State of California.
JAMES J. ARDITTO,
Deputy Attorney General.
Of Counsel.

Receipt of a copy of the within is admitted this 20th day of June, 1939.

By REGINALD S. LAUGHLIN,
Attorney for Appellee.

[Endorsed]: Filed Jun. 20, 1939.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

Come now the appellants above named and hereby designate the following points upon which they will rely on the appeal herein:

I.

None of the cotton, pledged to the Commodity Credit Corporation, and taxed by the appellants herein, 'belongs to' the Commodity Credit Corporation;

II.

None of the cotton, pledged to the Commodity Credit Corporation, and taxed by the appellants herein, 'belong to' the United States;

III.

A county of the State of California may:

(a) Legally levy a tax upon cotton located within its boundaries and owned by a taxable person at twelve o'clock M. on the first Monday in March, although that cotton has been pledged

to the Commodity Credit Corporation as security for a loan;

(b) Legally effect collection of a tax levied upon that cotton under the circumstances referred to in subdivision (a), supra;

IV.

Congress did not, within the purview of the Constitution of the United States, have the power to create the Commodity Credit Corporation, in that:

(a) The grant by Congress to the President of the United States of the right to create such agencies as the Commodity Credit Corporation constituted an unlawful delegation of power.

(b) The purposes for which the Commodity Credit Corporation was created are not within the enumerated powers granted to Congress by the Constitution of the United States.

Dated: June 19th, 1939.

DAN F. CONWAY,
District Attorney, County of Fresno.

W. C. TUPPER,
Assistant District Attorney, County of Fresno.
Attorneys for Appellants.

EARL WARREN,
Attorney General of the State of California.

JAMES J. ARDITTO,
Deputy Attorney General.
Of Counsel.

Receipt of a copy of the within is admitted this 20th day of June, 1939.

By REGINALD S. LAUGHLIN,
Attorney for Appellee.

[Endorsed]: Filed Jun. 20, 1939.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD TO BE PRINTED OR OMITTED

To the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit:

The appellants above named hereby designate for the printed record the following parts of the certified transcript of record on appeal in the above-entitled matter, to-wit:

Document	Commencing page of certified transcript of record
Attorneys, Names and Address of	1
Bond, For Costs on Appeal	57
Amended Bill of Complaint	33
Judgment	51
Memorandum of Order for Judgment	50
Motion to Dismiss Amended Bill of Complaint	47
Notice of Appeal	53

Appellants hereby designate that the following parts of the certified transcript of record on appeal be omitted from the printed record, to-wit:

Document	Commencing page of certified transcript of record
Bill of Complaint	2
Designation of Contents of Record on Appeal	55
Motion to Dismiss Complaint	22
Order, Temporary Restraining	17
Order, Minute, of July 18, 1938, submitting and continuing restraining order in effect	24
Order, Minute, of October 25, 1938, submitting cause	49
Stipulation and Order continuing restraining order in effect	25
Stipulation and Order continuing restraining order in effect	28
Stipulation and Order for filing Amended Complaint	30

In addition to the documents which we have heretofore designated for the printed record, you are hereby requested to include in the printed record the following documents, to-wit:

1. Designation of Parts of Record to be Printed or Omitted.
2. Statement of Points to be Relied upon on Appeal.

3. Designation of Parts of the Record for Consideration of Appellants' Points to be Relied Upon on Appeal.

Dated: June 19th, 1939.

DAN F. CONWAY,
District Attorney, County of Fresno.
W. C. TUPPER,
Assistant District Attorney, County of Fresno.
Attorneys for Appellants.

EARL WARREN,
Attorney General of the State of California.
JAMES J. ARDITTO,
Deputy Attorney General.
Of Counsel.

Receipt of a copy of the within is admitted this 20th day of June, 1939.

By REGINALD S. LAUGHLIN,
Attorney for Appellees.

[Endorsed]: Filed Jun. 20, 1939.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLEE OF ADDITIONAL PARTS OF RECORD TO BE PRINTED.

To the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit:

Appellee above named hereby designates for the printed record the following additional part of the certified transcript of record on appeal in the above entitled matter:

Document	Commencing page of certified transcript of record
Stipulation and Order for Filing Amended Complaint	30

Dated: June 22nd, 1939.

JOHN D. GOODLOE,
REGINALD S. LAUGHLIN,
Attorneys for Appellee.

[Endorsed]: Filed June 23, 1939.

No. 9204

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

COUNTY OF FRESNO, and WALTER S. HENDERSON, Jr., Assessor of the County of Fresno, State of California,

Appellant,

vs.

COMMODITY CREDIT CORPORATION,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division

---

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

[Title of Circuit Court of Appeals and Cause.]

STIPULATION.

It Is Hereby Stipulated by and between the above named parties through their undersigned attorneys, that Walter S. Henderson, Jr., the present assessor of the County of Fresno, State of California, be and he is hereby substituted as a defendant in said official capacity in the place and stead of G. P. Cummings, Assessor of the County of Fresno, State of California.

Dated: February 14, 1940.

W. C. TUPPER
District Attorney, Fresno County
Attorney for Appellants.

SAMUEL O. CLARK, Jr.
Asst. Atty. General
per B. G.
Attorney for Appellee.

Approved by the Court:

.....
Presiding Justice.

[Endorsed]: Filed Feb. 14, 1940. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, February 14, 1940.

Before: Denman, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER SUBSTITUTING PARTY APPELLANT AND SUBMITTING CAUSE

Pursuant to stipulation of counsel for respective parties, Ordered Mr. Walter S. Henderson, Jr., present Assessor of County of Fresno, substituted as party appellant in the place and stead of G. P. Cummings.

Further Ordered appeal herein argued by Mr. James J. Arditto, Deputy Attorney General, State of California, counsel for appellants, and by Mr. Berryman Green, Special Assistant to the Attorney General, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, June 12, 1940.

Before: Denman, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

OPINION

Before: Denman, Mathews and Healy,
Circuit Judges.

Denman, Circuit Judge:

This is an appeal from a judgment declaring that the County of Fresno has no lien under the California law upon certain cotton situate in that

county by reason of the assessment of its value for taxation to its owner, or its sequestration for the owner's unpaid taxes, which is superior to a lien upon it, created prior to the assessment and sequestration, to secure a loan by the appellee under the provisions of the Agricultural Adjustment Act of 1938.

Appellee, plaintiff below, in its amended complaint alleged facts showing the existence of an actual controversy concerning the priority of the appellants' lien and, as relief, prayed for a determination of the controversy by a declaration of the law controlling the opposing contentions. The appellants, defendants below, moved to dismiss the bill on the ground that it failed to state a cause of action. The motion was denied and the court, finding that the defendant county and its assessor were "not desiring to further answer or plead," proceeded to render in a summary way a declaratory judgment responding to the prayer of the complaint. The defendants' desire and expectation that the court would grant the relief of adjudicating the actual controversy is evidenced by the giving of a stipulation, to be considered in connection with the declaration that they would not answer or plead, agreeing that the court "may provide that no interest or other penalties shall be collected from plaintiff for nonpayment of any of said taxes included in the pending cause and for subsequent years

pending final determination of this action, and defendants will not object to such provision."

We dispose of the controversy by a consideration of the appellants' contention as stated in the amended complaint "that said cotton is subject to assessment and taxation by the State of California and its political subdivisions, and is subject to seizure and sale in the event of non-payment of taxes, without said assessments, seizures or sales being made subject to said rights, interests and liens of plaintiff," and assuming as valid the further claim of appellants' supplemental brief that "The pledgee's lien acquired by the Commodity Credit Corporation herein is in no better position than would be a lien acquired by a private individual."

Appellants contend that under the California law (1) an assessment on personal property creates a lien on the particular property assessed and (2) that, because any tax assessment is to be deemed a judgment against the taxpayer which, if not paid in the statutory period, warrants a seizure and sequestration by the assessor of ANY personal property whether or not it be the property assessed, the seizure creates a lien on the seized property superior to any contract lien existing prior to the seizure. We cannot agree with these contentions.

(1) Personal property has been assessed in California for three-quarters of a century. The Political Code of the State of California, section 3717, creates a specific lien on the taxpayer's real property for personal property taxes assessed to

him. Appellants admit that there is no statute creating a tax lien upon the personal property assessed and that no case has held that personal property is subject to such a tax lien upon its assessment to the owner. The admission is most significant and the novel rule which appellants are now seeking to establish would impair every pledge whether of silver bullion, jewels, bonds, securities or any personal property with state or national banks or any lenders. It seems inconceivable that, if such a prior lien exists, no taxing authority has sought to enforce it and found the taxpayer's resistance in the courts.

Appellants' argument is stated as follows: "* * * the rule in California is that a tax obligation of the State of California or any of its political subdivisions is entitled to priority in payment regardless of whether it has been given any such preference by statute. The California Courts have adopted 'the superior dignity' principle which is that because of the importance of the functions of government and the necessity of raising promptly the revenues necessary to carry out such functions, the obligation to pay taxes is necessarily of much greater dignity and on a much higher plane than ordinary obligations whether secured or unsecured, and therefore must be accorded some inherent priority over ordinary obligations, whether secured or unsecured, and whether such ordinary obligations existed before or after the tax obligation arose." This rule, appellants claim, is established

in the following California cases: California Loan and Trust Co. v. Weis, 118 Cal. 489, 50 Pac. 697; O'Dea v. Mitchell, 144 Cal. 374, 381, 77 Pac. 1020, 1022; Woodil & Hulse Elec. Co. v. Young, 180 Cal. 667, 669, 670, 182 Pac. 422, 424; San Mateo County Bank v. Dupret, 124 Cal. App. 395, 396, 12 Pac. (2d) 669, 670.

Our examination of these authorities shows none holding that a tax lien not specifically created by law overrides a prior contract lien. Whatever may have been said concerning the "superior dignity" principle in earlier cases on liens on real property is overruled by the holding in Guinn v. McReynolds, 177 Cal. 230, 232, where a real estate mortgage lien was held superior to a subsequently created tax lien on the same property, not expressly made a first lien, for expenditures for eradication of disease and pests in orchards and elsewhere.

> "* * * A lien for unpaid taxes or assessments is generally held to be superior to all contract liens, whether prior or subsequent in time. But the authorities declare, virtually without dissent, that even a tax lien is not entitled to rank ahead of a pre-existing mortgage, or other contract lien, unless the legislative enactment creating the tax lien has given it priority. (37 Cyc. 1143.) The priority need not be declared in express terms. It is enough if the intent to postpone contract liens appear by reasonable inference from the provisions of the act. But the

> authorization for displacing the earlier lien must, under all the decisions, be found in the statute. * * *."

We hold there is no merit in appellants' contention that mere assessment of the value of personal property to known or unknown owners creates a lien upon that property.

(2) With regard to the contention that the assessment of any property is in effect a judgment against the taxpayer for the amount of any tax so assessed, section 3716 of the Political Code provides:

> "Every tax has the effect of a judgment against the person, and EVERY LIEN CREATED BY THIS TITLE has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof provided, that the lien of every tax whether now existing or hereafter attaching shall cease to exist for all purposes after thirty years from the time said tax became a lien; * * *." (Emphasis by the Court)

The next section of the Code, section 3717, provides, "Every tax due upon personal property is a lien upon the REAL property of the owner thereof, from and after twelve o'clock m. of the first Monday in March in each year." Section 3820 of the

Code provides: "The Assessor shall have power to collect the taxes on ALL property when, in his opinion, said taxes are not a lien upon real property sufficient to secure payment of the taxes. * * *." (Emphasis by the Court) And the next section, section 3821 provides that "the assessor may collect the taxes by seizure and sale of ANY personal property owned by the person against whom the tax is assessed, * * *." (Emphasis by the Court)

Here we have the contrast between the specific lien on real property created by the statute and the right to seize ANY personal property whether assessed or not for ANY unpaid taxes, whether upon land or personal property.

On the face of these statutes it would appear that although the jewels of a landowner may not have been assessed, if he fail to pay the taxes upon his land his jewels may be seized by the assessor and sold. With this contention we are not concerned. The question is, assuming the jewels are pledge for a loan and are seized by the assessor, is the pledge lien subordinate to a lien created by the seizure?

In effect, it is claimed by appellants that if different parcels of jewels of the landowner be held by several different banks as pledges for their several loans, the assessor may pick his bank, take from it the pledged jewels free of the pledge, and impose on this particular bank the entire liability for the taxes which may exceed the value of the pledged jewels. Though there be no lien upon the jewels by virtue of the assessment, the assessor's seizure of

the pledge in the hands of the particular bank chosen to discharge the landowner's debt to the county destroys the bank's security.

No authority is cited to sustain this extraordinary proposition—the necessary corollary of the present attempt to destroy or impair the lien of the appellee. We find no merit in it.

Upon the controversy between the appellants and appellee we hold the seizure of the cotton by appellants, because of nonpayment of taxes by the owner, creates no priority over the lien of appellee and that the rights of appellee cannot be impaired or destroyed by such action by appellants.

Judgment affirmed.

[Endorsed]: Opinion. Filed Jun. 12, 1940. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9204

COUNTY OF FRESNO, etc., et al.,
Appellants,

vs.

COMMODITY CREDIT CORPORATION,
Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Northern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Northern Division, and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Filed and entered June 12, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Fifty-one (51) pages, numbered from and including 1 to and including 51, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 19th day of July, 1940.

[Seal] PAUL P. O'BRIEN,
Clerk.

Office - Supreme Court, U. S.
FILED
SEP 26 1940
CHARLES ELMORE CROPLEY
CLERK

No. 843

In the Supreme Court of the United States

OCTOBER TERM, 1940

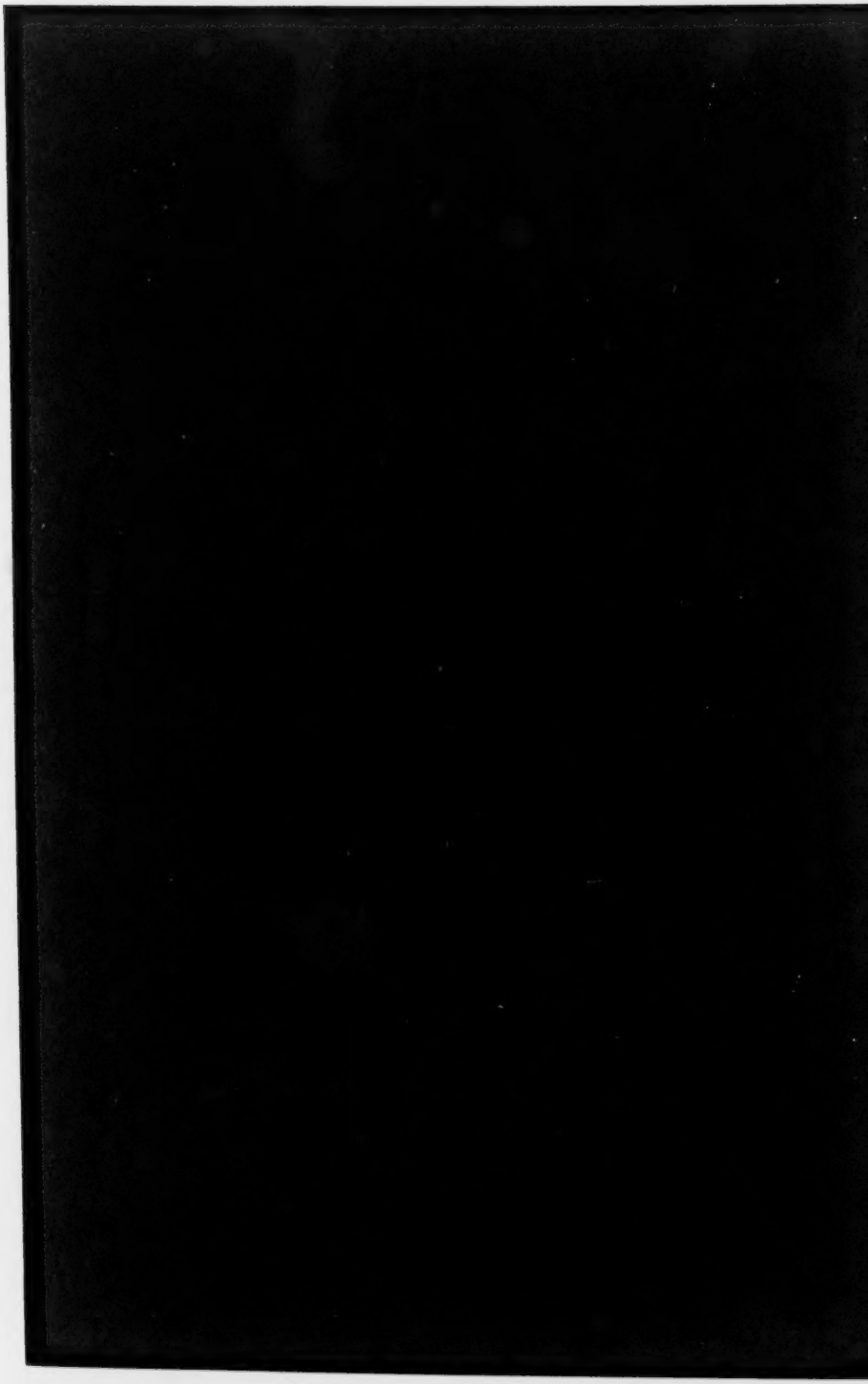
COUNTY OF FRESNO AND W. ALBERT S. HARRISON, JR., ASSESSOR OF SAID COUNTY, ET AL., BOARD OF CALIFORNIA, PETITIONERS

v.

[illegible]

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE RESPONDENT IN OPPOSITION



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261787—40

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 341

COUNTY OF FRESNO AND WALTER S. HENDERSON, JR., ASSESSOR OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA, PETITIONERS

v.

COMMODITY CREDIT CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the District Court (R. 22) is not reported. The opinion of the Circuit Court of Appeals (R. 43–50) is reported in 112 F. (2d) 639.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 12, 1940. (R. 51.) The petition for a writ of certiorari was filed on August

15, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the County of Fresno, a political subdivision of the State of California, may seize and sell for nonpayment of personal property taxes cotton pledged to the Commodity Credit Corporation, a wholly owned corporate instrumentality of the United States, unless such seizure and sale is made expressly subject to and in recognition of the prior lien interests of the Commodity Credit Corporation in the cotton.

STATUTE INVOLVED

Sections 3716 and 3717 of the Political Code of California are set forth, to the extent material, in the opinion of the court below. (R. 48, 49.)

STATEMENT

This action for a declaratory judgment was instituted in the District Court by the respondent herein, Commodity Credit Corporation, a corporate instrumentality of the United States engaged in making loans upon the security of cotton and other agricultural products, whose general activities and the legal authority therefor are more fully set forth in the amended bill of complaint. (R. 4–12.) The defendants' motion to dismiss the amended bill of complaint (R. 21),

was denied (R. 22), and the District Court entered judgment on the pleadings. (R. 23–25.) The amended bill discloses the following material facts:

On March 7, 1938, the Commodity Credit Corporation had in its possession, warehouse receipts for cotton stored in a warehouse belonging to Valley Compress Company, at Pinedale, Fresno County, California. It had acquired possession thereof through loans made to the producers of that cotton, and had liens thereon. Similarly, as a result of further loans during the period March 7, 1938 to June 21, 1938, the Commodity Credit Corporation acquired possession and liens upon additional cotton likewise stored at the same warehouse. (R. 12–14.)

During the period March 7–June 21, 1938, the Assessor of Fresno County, levied assessments at full value upon all the cotton so deposited in the aforementioned warehouse (R. 14), and on June 21, 1938 seized possession of 20,990 bales of such cotton which he proposed to sell at public auction to satisfy the taxes thus assessed together with costs. (R. 15.) The 20,990 bales included cotton on which loans had been made prior to March 7, 1938, as well as cotton on which loans had been made between March 7, and June 21, 1938.[1] (R.

[1] In the latter category some of the loans had been made before the levy of assessment, while in some instances they were made after such levy of assessment. (R. 15.)

15.) The market value of the cotton was, at all times material here, less than the amounts advanced by the Commodity Credit Corporation thereon. (R. 15–16.)

The bill further alleges that the Assessor threatens to sell the cotton without in any way reserving or protecting the rights, liens and interests of the Commodity Credit Corporation. (R. 16.) The bill names as parties defendant the Assessor of Fresno County and the County itself, and prays for a declaratory judgment (R. 19) "respecting the assessment of taxes by defendants on the cotton on which plaintiff has made advances and holds warehouse receipts as aforesaid, and respecting the seizure and sale of said cotton in the event of the nonpayment of such taxes, and that this Court adjudge and decree that all such assessments, seizures and sales are illegal and void unless the same are expressly made subject to the rights, interests and liens of plaintiff in and to said cotton."

The District Court denied a motion to dismiss, and entered judgment in favor of the Commodity Credit Corporation. The Circuit Court of Appeals affirmed, holding that under California law, no superior lien attached in favor of the County, and that therefore the cotton could not be sold for taxes without first making provision for the existing liens of the Commodity Credit Corporation.

ARGUMENT

The petition attempts to raise sweeping issues with respect to the constitutionality of the Commodity Credit Corporation. However, we believe that the case was correctly decided below upon a narrow question of California law, and does not require consideration of the many issues presented in the petition. The Circuit Court of Appeals simply held that the lien of the Commodity Credit Corporation, like the lien of any private person or corporation, must be recognized under California law. Its decision in this respect is in accord with California decisions and does not present any question calling for further review by this Court.

1. The question whether, under California law, personal property taxes are entitled "*ex proprio vigore*" or by statute to priority in payment over a private lien which is prior in time is one of purely local law. *Games* v. *Dunn*, 14 Pet. 322, 327; *United States* v. *Madison County, Ark.*, 293 Fed. 739, 742 (C. C. A. 8th); *State Railroad Tax Cases*, 92 U. S. 575, 618. The conclusion of the court below that, in California, personal property taxes are not liens on the specific personal property taxed and that, under California law, those taxes are not "*ex proprio vigore*" entitled to payment in priority over private liens which are prior in time is supported by the decisions of the Supreme

Court of California. *Guinn* v. *McReynolds,* 177 Cal. 230, 232.

The petitioners point to no California statute providing that personal property taxes constitute a lien upon the specific personal property taxed.[2] In substance the petitioners' contention is that, irrespective of statute, taxes are inherently a lien upon specifically taxed property or other property of a taxpayer. The principal of "superior dignity," however, does not obtain in California, which follows the almost universally accepted rule that taxes are not inherently a lien upon specifically taxed property or other property of a taxpayer unless expressly made so by statute. 3 Cooley, *Taxation* (4th Ed., 1924), Section 1230, pp. 2451–2453; Peppin, *Priority of Tax and Special Assessment Liens,* 23 Cal. L. Rev. 264, 267, 270.

California Loan Etc. Co. v. *Weis,* 118 Cal. 489, 50 Pac. 697; *O'Dea* v. *Mitchell,* 144 Cal. 374, 381, 77 Pac. 1020, 1022; *Woodill & Hulse Elec. Co.* v. *Young,* 180 Cal. 667, 669, 670, 182 Pac. 422, 424, and *San Mateo County Bank* v. *Dupret,* 124 Cal. App. 395, 396, 12 P. (2d) 669, 670, do not support the view that the "superior dignity" principle prevails in California. Those cases arose under statutes which expressly provided a lien for the taxes and the question in those cases was the relative pri-

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[2] That there was no such statute was conceded below. (R. 46.)

ority between admitted liens which is a totally different question from the one at bar. Moreover, even if *California Loan Etc. Co.* v. *Weis, supra,* and *O'Dea* v. *Mitchell, supra,* may be considered as holding that tax liens are inherently fixed liens, those decisions were superseded by *Guinn* v. *McReynolds, supra. RCA Photophone Inc.* v. *Huffman,* 5 Cal. App. (2d) 401, not only is a decision of a California intermediate court, but is not remotely in point here. In that case seizure and sale of personal property for the payment of taxes assessed under Section 3628 of Deering's Political Code of California to one "in whose possession or control it was" was upheld although the legal title to the property was in another. We submit that the decision of the Supreme Court of California on the question of local law in issue is here controlling. *Des Moines Bank* v. *Fairweather,* 263 U. S. 103, 105.

2. The petitioners' contention that Section 3716 of Deering's Political Code of California (1937) provides a statutory priority for personal property taxes over prior liens is groundless. As pointed out by the court below, while Section 3716 of Deering's Political Code of California provides that every tax has the effect of a judgment against the person, the only lien which can result therefrom is the one which stems from title upon an execution duly levied against property of the delinquent taxpayer. Section 3717 of Deering's Political Code

of California (1937) provides merely that (p. 617):

> Every tax due upon personal property is a lien upon the *real* property of the owner thereof, * * *. (Italics supplied.)

No other lien is provided for personal property taxes.

CONCLUSION

The decision of the court below on a question of purely local law is in harmony with the decisions of the Supreme Court of California and no important general question is presented by the petition. There is no conflict of authority and the petition for a writ of certiorari should be denied.

Respectfully submitted.

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